

DISTRIBUTION LIST

\$600,000

MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A

Issuer

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147-0122  
Sharon Postalwait, Chairwoman  
Wilma Mace, Secretary  
(304) 354-7799 Telephone

Consulting Engineer

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Bond Purchaser

United States of America  
United States Department of  
Agriculture, Rural Utilities Service  
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Ripley, WV 25271  
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Municipal Bond Commission

WV Municipal Bond Commission  
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Charleston, WV 25301  
Sara Boardman, Executive Director  
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\$850,000

MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

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Bond Counsel

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Accountant

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Depository Bank

Calhoun County Bank, Inc.  
372 Main Street  
Grantsville, WV 26147  
(304) 354-6106 Telephone  
(304) 354-7855 Telecopier  
[mhaymaker@calhounbanks.com](mailto:mhaymaker@calhounbanks.com) E-Mail Add.

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The Pre-Closing of the sale of \$600,000 and \$850,000 Mt. Zion Public Service District, Water Revenue Bonds, Series 2010, will take place at the Arnoldsburg Community Center in Arnoldsburg, West Virginia at 10:00 a.m., Eastern Time, on April 22, 2010. The Closing of the Series 2010 Bonds will occur on April 26, 2010. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document that references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.



**APPALACHIAN REGIONAL COMMISSION GRANT CONTRACT**  
**between the**  
**WEST VIRGINIA DEVELOPMENT OFFICE**  
**and the**  
**Calhoun County Commission**

**THIS AGREEMENT**, entered into this 10th day of February, 2006, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office, hereinafter called the "State," and the Calhoun County Commission and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the State has elected to administer an Appalachian Regional Commission Grant WV-15363-07, approved on February 10, 2006, under Section 214 of the Appalachian Region Commission Act of 1965, as amended, subject to the applicable regulations of the Department of Housing and Urban Development, including but not limited to 24 CFR Part 570, Sub-Part I, as amended or revised, and subject to the scope of the State of West Virginia's Grants Management Handbook and other Program Guidelines, receipt of which is hereby acknowledged by the Grantee.

**WHEREAS**, the Grantee has identified its housing and community development needs, including those of low- and moderate-income persons and the activities to be undertaken to meet such needs.

**WHEREAS**, the Grantee has prepared a written citizen's participation plan which provides opportunities for citizen participation, hearings, and access to information with respect to the proposed project statement in such a manner as to afford affected citizens an opportunity for examination and comment regarding the proposed project and on the community development performance of the Grantee, a Community Development Plan, and an Anti-displacement and Relocation Assistance Plan.

**WHEREAS**, for audit purposes, the Catalog of Federal Domestic Assistance number is 23.002, Appalachian Supplements to Federal Grant-in-Aid (Area Development), Appalachian Regional Commission, funded by the Appalachian Regional Commission.

**WHEREAS**, the Grantee has requested assistance from the State and has offered assurances that maximum feasible priority has been given to activities which will benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight, or to meet other community needs having a particular urgency because an existing condition poses a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance to Grantee.** The State shall obligate to the Grantee, from funds allocated to the State by Grant Agreement WV-15363-07, \$1,500,000.00 to perform such tasks hereafter described in the Scope of Services.

2. **Scope of Services.** The Grantee, or its designated agent, in accordance with the Small Cities Block Grant Handbook other Program Guidelines to be used in administration of the Appalachian Regional Commission Grant, and in accordance with the approved application of the Grantee which is attached hereto and made a part hereof as Attachment A, shall do, perform, and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary to assist the Calhoun County Commission to enable the Mt. Zion Public Service District to provide water service to approximately 183 new customers in the Sand Ridge, Russett, and Route 16 South areas of Calhoun County.

3. **Changes.** The State and the Grantee, from time to time, may require changes in the Scope of the Services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed which are mutually agreed upon by and between the State and the Grantee, shall be incorporated in written amendments to

this Contract. Major changes in the Scope of Services which substantially deviate from that originally approved shall require the same citizen participation process as performed for the initial submission of the grant proposal. The State reserves the right to make final determination on questions regarding changes in the Scope of Services.

4. **Time of Performance.** The Grantee will commence its duties under this Contract on February 10, 2006, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by February 10, 2009. Completion date of this Contract may only be extended by mutual written agreement of both parties.

5. **Performance Measures.** Performance measures establish that the Grantee should have all other funding in place and design and engineering completed within twelve months. Furthermore, construction should be started within eighteen months after the execution of this Agreement by both parties. These performance measures establish goals against which performance under this contract can be measured and evaluated during regular scheduled monitoring visits by the State. Failure to meet these performance measures can result in termination of this contract (see Provision 10 of this agreement).

6. **Administrative Requirements and Procedures.**

(A) *Personnel.* The Grantee represents that it has or will secure personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of, or have any contractual relationship with the State, consistent with the procedures identified in the Small Cities Block Grant Handbook.

(B) *Applicable Law.* The Grantee, its agents, and subrecipients shall comply with all the restrictions, conditions, policies, guidelines, and requirements of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended; with all applicable State and Federal Laws and regulations including 24 CFR Part 570; 24 CFR

Part 85; OMB Circulars A-87, A-110, A-122, and A-133, as applicable, in administering and distributing funds provided under this Agreement including, but not limited to, the following:

(1) P.L. 88-352: Refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations are found in 24 CFR Part I.

(2) P.L. 90-284: Refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-20 et. seq.) popularly known as the Fair Housing Act which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap, or familial status. The Grantee further certifies that it will take actions necessary to affirmatively further fair housing.

(3) Executive Order 11063, as amended by Executive Order 12259, requires that taking of all actions necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use of occupancy thereof. Implementing regulations are contained in 24 CFR 107.

(4) Section 109 of P.L. 93-383 requires that no person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds.

Section 109 of the Act further provides any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified handicapped person as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply.

(5) Section 110 of P.L. 93-383 requires compliance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) also applies. In addition, the West Virginia Act on Construction of Public Improvements, Article 5A, Chapter 21 of the West Virginia Code applies.

(6) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) requiring that to the greatest extent feasible opportunities for employment and training be given to lower income persons residing within the unit of local government or metropolitan area or nonmetropolitan county in which the project is located, and that Contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the same area.

(7) Executive Order 11246, as amended by Executive Order 12086 shall apply and provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

(8) Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831b) prohibits the use, and requires the elimination and/or abatement of the hazards of lead-based paints in residential structures constructed or rehabilitated with Federal assistance to include notification of the hazards of lead-based paint. The Lead Safe Housing Regulation (24 CFR Part 35) established the requirements for notification, evaluation, and reduction of lead-based paint hazards in federally-owned residential property and housing that receives federal assistance.

(9) The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and action as specified and required in regulations issued by the Secretary of Housing and Urban Development pursuant to Section 104(g) of the Act and published in 24 CFR Part 58. In addition to assuming responsibility for National Environmental Policy Act (P.L. 91-190), the Grantee must take into account, where applicable, the criteria, standards, policies, and regulations of the following: (a) Historic

Preservation Act of 1966; (b) Executive Order 11593; (c) The Reservoir Salvage Act of 1960; (d) Flood Disaster Protection Act of 1973; (e) Executive Order 11988, Floodplain Management; (f) Executive Order 11990, Protection of Wetlands, (g) Coastal Zone Management Act of 1972; (h) the Safe Drinking Water Act of 1974; (i) the Endangered Species Act of 1973; (j) the Wild and Scenic Rivers Act of 1968; (k) the Clean Air Act ; (l) Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979); (m) 24 CFR Part 51, Subpart B, Noise Abatement and Control; (n) Subpart C - Siting of HUD Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature; (o) and Subpart D - Siting of HUD Projects in Runway Clear Zones and Accident Potential Zones at Military Airfields. Before committing any funds (other than for exempt activities), the Grantee must certify to the State that it has complied with all requirements and obligations that are set forth by 24 CFR Part 58. In addition, the Grantee must submit all requested Evidentiary Material to the State for approval prior to the obligation of any funds (other than for exempt activities).

(10) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The West Virginia Code, Chapter 54-3 also applies.

The Grantee must certify compliance with URA. Under Section 104(d) of the Act, each Grantee must adopt, make public and certify that it is following a residential anti-displacement and relocation assistance plan providing one-for-one replacement units and relocation assistance. The plan must also indicate the steps that will be taken to minimize the displacement of persons from their homes as a result of any activities assisted under this part all in accordance with 24 CFR Part 570.488(b).

(11) The State and the Grantee will comply with the provisions of the Department of Treasury Circular 1075 and/or the State's Small Cities Block Grant Handbook,

as revised, in the process of requesting and administering funds from the State's Letter of Credit.

(12) Funds provided under this agreement shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program; and flood insurance is obtained in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973.

(C) *Accounting.* The Grantee will establish a separate account for the proper recording of project costs in accordance with generally accepted accounting principles and procedures so as to reflect all receipts and allowable expenditures, including program income in connection with the said project and the purpose thereof. PI generated prior to project closeout must be expended as received for project related activities in accordance with 24 CFR 570. If the Grantee received less than \$25,000 per state fiscal year in program income after closeout, the dollars received are not subject to provision of 24 CFR 570 and may be used at the Grantees discretion. If program income exceeds \$25,000 in any given state fiscal year after closeout, all program income earned must be expended in accordance with 24 CFR 570.489.

(D) *Audit.* Pursuant to provisions of Chapter 6, Article 9, Section 7 of the West Virginia Code, the Community Development Division has adopted the policy of accepting annual financial audits contracted or performed by the State Auditor's Office. The Grantee will include these funds to be audited with its yearly organization-wide audit. Audits shall be conducted in accordance with the provisions of the Office of Management and Budget (OMB) Circular A-133, and with standards established by the Comptroller General as specified in Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Units of local government will make audit reports available for public inspection within thirty (30) days after the completion of the audit.

(E) *Record Retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the grant shall be retained for a period of three years, with the following qualifications:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds shall be retained for three years after its final disposition.

(3) Records for displacement shall be retained in accordance with the Small Cities Block Grant Handbook.

(4) The retention period starts from the date of the issuance of the final audit report.

(F) *Access to Records.* The Grantee shall, at any time during normal business hours and as often as the State or its designated representatives deem necessary, make available for examination all records, books, accounts, reports, files, and other papers, things or property of the Grantee with respect to the matters covered by this Contract. All negotiated contracts awarded by the Grantee shall include a provision that the Comptroller General or any duly authorized representative of the State or HUD shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(G) *Repayment.* The Grantee shall refund to the State or Federal government any expenditures determined to be made for an ineligible purpose for which Federal funds were received.

(H) *Competitive Procurement Procedures.* All procurement transactions, including professional services, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free

competition consistent with procedures identified in the Small Cities Block Handbook, 24 CFR Part 85, and with applicable local or State law.

The Grantee shall procure architect/engineer services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 24 CFR Part 85.

The Grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code and be in compliance with federal regulations 24 CFR Part 85.

The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to their project which has an estimated value of over \$25,000. All transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities. Any attempts by the Grantee to segregate the project into sections in order to circumvent competitive procurement may be cause for termination of this Agreement under the provisions of Paragraph 9. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, sending notification to the State's Small Business Development Center Division, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the State or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.

Grantees have the ability to procure professional and construction services, therefore, the design-build method (5-22A-1). Public agencies can only utilize design-build

on building project. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

(I) *Bonding and Insurance.* As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$100,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$100,000. If the contracts or subcontracts exceeds \$100,000, the minimum bonding and insurance requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with a contract to secure fulfillment of the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor or materials in the execution of the work provided for in the Contract.

(J) *Facilities Operation.* The Grantee shall operate and maintain all facilities to which the general public has right of access constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable Federal, State and local statute, law, ordinance, or regulation as to actual construction procedures. The Grantee shall be responsible for maintenance and operation

of such facilities upon completion. The Grantee may not change the use or planned use of any such facility (including the beneficiaries of such use) from that purpose initially approved unless the Grantee provides affected citizens with reasonable notice thereof and opportunity to comment on any proposed change all in accordance with 24 CFR Part 570.489(j).

(K) *Conflict of Interest.* No officer, agent, consultant, employee, elected or appointed official of the State, the Grantee, or any public agency or subrecipient receiving Community Development Block Grant funds who exercises or has exercised any function or responsibilities with respect to activities assisted with Community Development Block Grant funds or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from such activity or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. The conflict of interest provision of 24 CFR 85.36; 24 CFR 570.489 (g) and (h); and OMB Circular A-110 also apply as appropriate.

7. **Recovery of Capital Costs.** The Grantee will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds from this program by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless: (a) funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from other revenue sources; or (b) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the Grantee certifies to the State of West Virginia that it lacks sufficient funds received under the program to comply with the requirements of clause (a).

8. **Method of Payment.** In order to receive any and all payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal

containing a progress report, and (b) a Request for Payment Financial Report. Upon receipt of said documents, the State shall review the same for reasonableness, appropriateness and eligibility and, if approved, will cause a warrant to be made on that sum to the Grantee for authorized expenditures from the State's Letter of Credit with the Department of Housing and Urban Development.

9. **Cost Underuns.** The State reserves the right to recapture all SCBG funds remaining due to cost underuns. The amount to be recovered will be prorated and proportional to the percent of actual total project expenditures.

10. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner its obligations under this Contract or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract by giving written notice to the Grantee to such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract by the Grantee, and the State may withhold any payments to the Grantee for the purpose of offsetting those damages until such time as the exact amount of damages due the State from the Grantee is determined.

11. **Termination for Convenience of the State.** The State may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the State as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

12. **Termination by the Grantee.** The Grantee may unilaterally rescind this Agreement at any time prior to the commencement of the project. After project

commencement, this Agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the State makes any expenditure or incurs any obligation with respect to the project.

13. **Reporting.** A Final Performance Report shall be submitted to the State with the final request for payment for project costs, excluding audit. Said Performance Report shall be made on the forms provided by the State and meet the requirements of said report as set forth in the appropriate Small Cities Block Grant Handbook of the State of West Virginia. Other reports may be requested by the State during the grant period as the State deems necessary and directs.

14. **Final Closeout.** Final Closeout shall be completed when the State: (a) is in receipt of a Final Performance Report; (b) has determined that all monitoring findings have been formally addressed and are resolved; and (c) has received a completed, final project audit and has determined that any findings have been resolved.

15. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division of the West Virginia Development Office or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

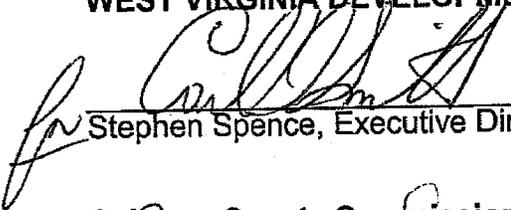
16. **Notice.** The parties hereto agree that notice shall be served when mailed certified U.S. Mail to the following addresses:

West Virginia Development Office  
**Community Development Division**  
Capitol Complex  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

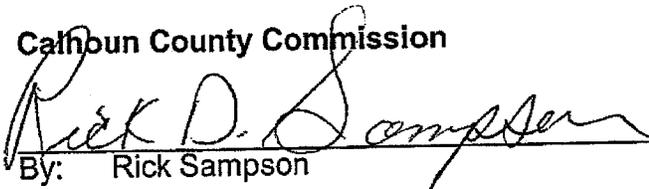
GRANTEE Calhoun County Commission  
Post Office Box 230  
Grantsville, West Virginia 26147

[WITNESSETH] that the parties hereto have entered their signatures hereafter with each representing to the other that the execution of this Agreement is done with full authority and that attached hereto and made a part hereof as Attachment B, is a certified copy of the resolution, motion, or similar action of the governing body of the Grantee directing and authorizing its official representative to act in connection with this Agreement.

STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE

  
\_\_\_\_\_  
Stephen Spence, Executive Director

Calhoun County Commission

  
\_\_\_\_\_  
By: Rick Sampson

FEDERAL EMPLOYER IDENTIFICATION NUMBER

55-6000308

\_\_\_\_\_  
F.E.I.N.

Water and Waste System Grant Agreement  
United States Department of Agriculture  
Rural Utilities Service

COPY

THIS AGREEMENT dated 07/10/02, \_\_\_\_\_, between

Mt. Zion Public Service District  
a public corporation organized and operating under

Chapter 16, Article 13A, West Virginia Code  
(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 3,900,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 2,100,000 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 2,100,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 1,800,000 or 75 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, ~~adopted by resolution dated~~ as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

\* as approved by the West Virginia Public Service Commission.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

**[Revision 1, 04/17/1998]**

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

**This Grant Agreement covers the following described real property (use continuation sheets as necessary).**

Approximately 7,000 LF of ten-inch waterline, 89,600 LF of eight-inch waterline, 13,500 LF of six-inch waterline, and 1,500 LF of two-inch waterline, two 100,000 gallon water storage tanks, one booster station, two pressure reducing stations and necessary appurtenances to serve approximately 183 users of Sand Ridge, Russett, and along WV Route 16 south of Arnoldsburg in Calhoun County, West Virginia.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

**[Revision 1, 04/17/1998]**

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

- (a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.
- (b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

- (1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.
- (2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.
- (3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

- (a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.
- (b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

**This Grant Agreement covers the following described equipment(use continuation sheets as necessary).**

None

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414 ) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

**[Revision 1, 11/20/1997]**

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

**[Revision 1, 11/20/1997]**

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 1,800,000 which it will advance to Grantee to meet not to exceed 75 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Chairman

attested and its corporate seal affixed by its duly authorized

Secretary

Attest:

Mt. Zion Public Service District

By

Sharon Postalwait  
Sharon Postalwait

(Title)

Chairman

By

Wilma Mace  
Wilma Mace

(Title)

Secretary

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By

Virginia M. McDonald Area Specialist  
Virginia M. McDonald (Title)

4/26/0

COPY

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated June 11, 2007, between

Mt. Zion Public Service District

a public corporation organized and operating under

Chapter 16, Article 13A, West Virginia Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a water system to serve the area under its jurisdiction at an estimated cost of \$ 5,200,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 2,950,000 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 2,950,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 450,000 or 75 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of the Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, as approved by the West Virginia Public Service Commission, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

**[Revision 1, 04/17/1998]**

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

**This Grant Agreement covers the following described real property (use continuation sheets as necessary).**

The entire water distribution system owned by the Mt. Zion Public Service District consisting of waterlines, storage tanks, booster stations, and all related facilities located in Calhoun County, West Virginia.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

**[Revision 1, 04/17/1998]**

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

**This Grant Agreement covers the following described equipment (use continuation sheets as necessary).**

None

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414 ) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:  
**[Revision 1, 11/20/1997]**

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.  
**[Revision 1, 11/20/1997]**

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 450,000 which it will advance to Grantee to meet not to exceed 75 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

\_\_\_\_\_  
Chairman

attested and its corporate seal affixed by its duly authorized

\_\_\_\_\_  
Secretary

Attest:

By Sharon Postalwait  
Sharon Postalwait  
(Title) Chairman

By Wilma Mace  
Wilma Mace  
(Title) Secretary

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By Virginia M. McDonald Rural Development Specialist  
Virginia M. McDonald (Title)

4/26/10



STATE OF WEST VIRGINIA,

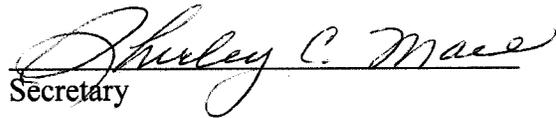
COUNTY OF CALHOUN, to-wit:

I, SHIRLEY C. MACE, do hereby certify that I am the duly qualified and acting Secretary of the Public Service Board of the Mt. Zion Public Service District.

I further certify that attached hereto are Orders of the County Commission of Calhoun County, West Virginia, creating the Mt. Zion Public Service District and subsequently expanding its boundaries, all of which Orders remain in full force and effect with no changes, insertions, amendments or modifications having been made thereto since their respective dates of adoption.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of said Public Service District as of the 26<sup>th</sup> day of April, 2010.

(SEAL)

  
Secretary

ORDER

RE: Appointment of Committee for William Saltkeld.

This day Ottis Susie Greathouse, a resident of Calhoun County, West Virginia appeared in open Court upon her petition heretofore filed praying that she be appointed Committee for William Saltkeld, a mentally incompetent person; upon the statement made by Dr. Joseph G. Vazquez, a medical doctor who states that said William Saltkeld is incompetent and incapable of transacting any business; and, upon written notice served upon the said William Saltkeld more than five days proir to this date that a hearing of the matters arising on said petition would be heard on this date.

Whereupon, the Court, after considering evidence pertaining to the mental condition of said William Saltkeld finds and is of the opinion that he is now mentally incompetent and that a Committee should be appointed to take charge of his person and property.

It is therefore ORDERED that said Ottis Susie Greathouse be and she is hereby appointed as Committee for the said William Saltkeld and to qualify as such Committee the said Ottis Susie Greathouse appeared before the Clerk of said Court and took the oath required by law and together with Holly R. Greathouse of Annamoriah, West Virginia, as her surety, entered into and acknowledged a bond in the penalty of One Hundred Dollars (\$100.00), conditioned according to law and payable to the State of West Virginia, for her faithful performance as such Committee.

It is ORDERED that said estate be and the same is hereby referred to Stanley D'Orazio, a Commissioner of Accounts of this County for settlement.

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This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Mt. Zion Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on October 5, 1964, the President announced that all persons residing in or owning or having any interest in property in such proposed Public Service District desiring to be heard for or against the creation of said District would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Court then further discussed the creation of said Public Service District, whereupon Donald W. Morris introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER creating Mt. Zion Public Service District in Calhoun County, West Virginia"

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Loyd Wright seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Unanimous  
Nay" None

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

Donald W. Morris introduced and caused to be read a proposed resolution and order, entitled:

" A RESOLUTION AND ORDER appointing members to the Public Service Board of the Mt. Zion Public Service District, "

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Loyd Wright seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye:Unanimous  
Nay: None

420  
Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

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WHEREAS the County Court of Calhoun County, West Virginia, did heretofore by resolution and order adopted November 2, 1964, create the MT. ZION PUBLIC SERVICE DISTRICT; and

WHEREAS, under the provisions of Article 13-a of Chapter 16 of the West Virginia Code, the powers of said Public Service District shall be vested in and exercised by a Public Service Board; and

WHEREAS, since there is no city, incorporated town or other municipal corporation included within said District, it is provided by said Article 13-a of Chapter 16 of the West Virginia Code that this County Court shall appoint three members of said Board, who shall be persons residing within the District:

NOW, THEREFORE, Be it and it is hereby resolved and Ordered by the County Court of Calhoun County, West Virginia, as follows:

Section 1. That the County Court of Calhoun County, West Virginia, hereby finds and determines that Mildred Kerby, Fred Shock and Duane Poling are persons residing within the MT. ZION PUBLIC SERVICE DISTRICT, and the aforesaid persons are hereby appointed as members of the Public Service Board of said District and their respective terms of office shall be as follows:

Mildred Kerby for a term of six years from the first day of the month in which this resolution and order is adopted;

Fred Shock for a term of four years from the first day of the month in which this resolution and order is adopted; and

Duane Poling for a term of two years from the first day of the month in which this resolution and order is adopted.

Section 2. The aforesaid persons shall meet as soon as practicable, at the office of the Clerk of said County Court and shall qualify by taking an oath of office, and thereafter said appointees constituting the initial Public Service Board of the Mt. Zion Public Service District shall meet and organize in compliance with the provisions of Article 13-a of Chapter 16 of the West Virginia Code.

ADOPTED BY THE COUNTY COURT November 2, 1964.

The following bills were approved for payment from the General County Fund:

Ben Franklin Store	Supplies for Co. Offices	\$ 17.97
Cabot Corporation	Gas for Court House	13.37
Nina Pearcy	Ballot Commissioner	80.00
Rymer Law	do	80.00
Mrs. Roscoe D. Gainer	Delivering Ballots etc to 16 Precincts-Gen. Election	40.00
Casto & Harris, Inc.	General Election Ballots et al	483.66
do	Supplies for Assessor's Office	9.51
do	Supplies for Circuit Clerk's Office	4.60
do	Supplies for County Clerk's Office	43.48
Casto & Harris, Inc.	Lease Book 52 & Deed Book 107	117.30
Burroughs Corporation	Maintenance Agreement on Machines #F1104471D & A860255	55.00
do	Adding Machine Tape	31.40
Hope Nicholas	Registrar Fees for 3rd Quarter, 1964	34.00
Noe Office Equipment	Supplies for Co. Ex. Office	5.60
United Telephone Co.	Dues & Toll Calls for County Offices	163.49
James E. Morford	Sheriff's Mileage for October, 1964	42.84
Tona H. Haddox	Dep. Sheriff's Mileage, October, 1964	16.24
Burroughs Corporation	Ribbon for Sheriff's Office	3.10
Int. Business Machines Corp.	Maintenance Agree. on Typewriters 11/1/64 to 10/31/65	225.00
Monongahela Power Co.	Electric for Court House	66.03
Town of Grantsville	Water & Waste for October, 1964	38.85
Spencer Business Forms Co.	Supplies for Circuit Clerk's Office	4.65
James D. Stiles	Travel expense for October, 1964	24.86
Calhoun Insurance Agency	Premium on Policy # 371 39 34	79.00
Rochester Germicide Company	1 Bbl Sanor X Fluid	175.83
Martha Ferrell	Ex. help in Assessor's Office \$18.00 less .65 S.S.	17.35
Stanley D'Orazio	Re-imbursment for postage in Pros. Atty's Office	5.00
Mrs. Lucile McNary	Regional Librarian's Expense Account	30.88
Calhoun Chronicle	Pub. Fees	167.25
Euna Ann Reed	Ex. help in Co. Clerk's Office \$39.00 less \$1.41 S.S.	37.59

WEST VIRGINIA, TO WIT:

At a Special Session of the County Commission of Calhoun County held at the Courthouse  
reof on May Twenty Fourth, Nineteen Hundred Seventy Five.

Present: Ronald R. Blankenship, President; Deward L. Offutt and Martin Metz, Jr.,  
Commissioners; Victor Hamilton, Prosecuting Attorney.

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Other people present were Mildred Kerby, Mary and Bernard McDonald, Willis Morris,  
Lloyd Yoak, Jr., Steve Lesack, John Galligher, Mary Ann Barrows, Terry Tamberino and wife,  
together with other interested persons.

Session was called to order by Mr. Blankenship, President of the County Commission.

The first order of business, pertaining to the enlargement of the Mt. Zion Public Ser-  
vice District with respect to Resolutions and Plats of said addition as presented at  
previous meetings.

Mr. Blankenship, invited any individual having anything to say or comments to make about  
the enlargement of said District to speak in their behalf.

Mary McDonald commented against the enlargement, with various reasons such as chance  
of water shortage, drinking river water and possible increase in water rates or cost to the  
customers of the original Mt. Zion Public Service District.

Steve Lesack spoke mostly explaining that were treatments for water that had natural  
gas in it and that the water in the Arnoldsburg Area could be treated and made safe to use.

Mary Ann Barrows spoke in regard to the management of the water system by the Board  
of Directors as to who would be eligible to participate in the construction of the new system  
and the feasibility study to be made before any definite decision would be made.

John Galligher requested the County Commission to employ some firm to make a feasibility  
study, who would not be employed or in any way be concerned with the extension of said  
Public Service District, and to distribute copies of the study before offering the contract  
for bid. The Commission unanimously agreed to Mr. Galligher's request.

The Commission recessed for a few minutes with the Prosecuting Attorney. After returning  
to the meeting, Mr. Blankenship, President of said Commission moved that the Mt. Zion Public  
Service District be enlarged as proposed. All three members of Commission voting in favor  
of said motion; that the enlargement of the Mt. Zion Public Service District be accepted  
and approved as previously submitted.

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The next order of business was the Resolution for the Flood Insurance Program; The  
Resolution of Compliance with Section 1910 3 A of the Flood Insurance Program Regulations and  
the Regulations which were read to the public.

RESOLUTION  
for the  
FLOOD INSURANCE PROGRAM

WHEREAS, the County County Commission being cognizant to the recurring flooding and the  
threat of flooding of Little Kanawha River and the resulting damage to property located within  
Calhoun County; and,

A motion by Richard Kirby to appoint Hays Haymaker as of June 15, 1988, until the General Election Canvas to replace Glenn Hanlin who resigned as of May 20, 1988. Was seconded by Tony Morgan.

Motion was unanimous.

The meeting was adjourned until June 17, 1988.

COUNTY OF CALHOUN, STATE OF WEST VIRGINIA, TO-WIT:

At a continued session of the Calhoun County Commission held at the Courthouse, thereof, Grantsville, West Virginia, on June 17, 1988.

The meeting was called to order by Richard Kirby. Also present were Tony Morgan and Hays Haymaker.

A deliquation from the Mt. Zion-Arfoldsburg area was present concerning the Mt. Zion Public Service District request to include a Sewer System within its current boundaries. After much discussion Mr. Hays Haymaker made a motion to add a sewer system within the boundaries of the Mt. Zion Public Service District. Motion was seconded by Mr. Tony Morgan. Motion was unanimous.

A motion by Tony Morgan to deny the request from Allen Parsons requesting Larry Jarvis be bonded to carry a gun was seconded by Hays Haymaker. Motion was unanimous.

A motion by Hays Haymaker to approve the delinquent tax sheets presented by the Sheriff's Office was seconded by Tony Morgan. Motion was unanimous.

A motion by Tony Morgan permitting Richard Kirby to alter the contract with the Calhoun County General Hospital concerning the food and drugs for the prisoners of the Calhoun County Jail.

Was seconded by Hays Haymaker. Motion was unanimous.

THE FOLLOWING BILLS WERE APPROVED AND CONFIRMED BY SAID COMMISSION ON JULY 01, 1988:

GENERAL COUNTY:

10546	WV Association	Dues	\$1,000.00
10547	Radisson Hotel	Assessor/Convention	312.04
10548	Trapuzzano's Uniforms	Boots	121.40
10549	WV Uniforms	paratrooper boot (Ballengee)	82.14
10550	Spencer Business Forms	Supplies/Office	1,098.09
10551	WV Department of Highways	Gasoline	323.49
10552	Bernhardt's Clothes, Inc.	Hat, Chin Strap, Crown Strap	33.60
10553	Law Enforcement Equipment Co.	Jarvis Whistle & Chain	13.45
10554	Calhoun County Publishing Co.	Legal Advertisement	1,139.36
10555	Calhoun General Hospital	Prisoners Doctor Bills	217.65
10556	Calhoun Radiologist Association	Prisoners Bills	18.00
10557	Lloyd's Electronics, Inc.	Labor/Service Antenna Repair	171.60
10558	Grantsville Printing	Assessors Office Supplies	449.70
10559	Western Auto	Courthouse Supplies	12.59
10560	Furnace & Fireplace Shop	Repair Work, Jail	68.75
10561	Monongahela Power Company	Utilities	788.30
10562	Pursley's Furniture	Sweeper for jail	118.00
10563	Cabot Corporation	Courthouse Utilities	113.82
10564	Xerox Corporation	Contracted Service	979.50
10565	Calhoun General Hospital	Prisoner Meals	2,880.00
10566	State Tax Department		100.00
10567	The Michie Company	WV CD-Books	356.81
10568	Wirt County Commission	Prisoner feeding & keeping	96.00
10569	District Office Supplies	P.A. Office (Mag Developer)	439.80
10570	Casto & Harris	Office Supplies	290.70
10571	Drakes Auto Sales	Automobile Service	302.08
10572	Diskette Connection	Computer Discs	58.80
10573	Grantsville Postmaster	Postage	25.00
10574	Grantsville Postmaster	Postage	64.00
10575	Flinn's Septic Tank Maintenance	Rental Portable Toilets	45.00
10576	Ron Layfield	Travel Expense	44.00
10577	Allen Parsons	Transportation	10.38
10578	Town of Grantsville	Utilities (Library \$27.06)	925.97
10579	Ontel	Telephone Bill	478.64
10580	Ontel	Telephone Bill	138.22

The meeting was adjourned until July 01, 1988.

STATE OF WEST VIRGINIA, COUNTY OF CALHOUN, TO-WIT:

At a regular session of the Calhoun County Commission held at the Courthouse, Grantsville, on July 01, 1988.

The meeting was called to order by Richard Kirby. Also present was Tony Morgan and Hays Haymaker.

A motion by Tony Morgan to approve the minutes of the last meeting was seconded by Haymaker. Motion was unanimous.

PUBLIC HEARING 07-01-88

A motion by Tony Morgan to approve the Pleasant Hill Service District water line to the Ritchie County Line. Was seconded by Hays Haymaker. Motion was unanimous.



**CALHOUN COUNTY COMMISSION  
MEETING**

CCO 1:25 PAGE 01

**November 15<sup>th</sup>, 2007**

The meeting of the Calhoun County Commission was called to order on Monday November 5<sup>th</sup>, 2007, at 9:00 a.m. by Rick Sampson, President. Commissioners Kevin Helmick and Robert Weaver were present and Clerk Richard Kirby.

Others present were Gary Buchanan, Jennifer Helmick, Sheila Garretson, Brenda Dickey, Robert Groves, Jamie Shaw, Diane Ludwig, Linda McCartney, Ed Harris, Josh Johnson, Larry Harris, Terry Harris, Chris Church, two people from Ritchie County, Amanda Richards, Trevia Fulks, Brenda Dickey and Robert Groves.

Motion by Robert Weaver to approve the minutes of the Calhoun County Commission meeting held on October 15<sup>th</sup>, 2007 as presented by the Clerk, the motion was seconded by Kevin Helmick. The motion passed unanimously.

Ed Harris, an employee of the Commission was present to ask permission to hold the Christmas Craft Show in the Courthouse at the end of the month. The Commission gave permission to hold the Craft Show in the Courthouse on November 28, 29 and 30.

Larry & Terry Harris was present to ask the Commission with help on the water bill they received from the Pleasant Hill Public Service District. The bill was \$744.65 and the Pleasant Hill gave a leak reduction of \$81.50 and stated that was all the relief they could give. The Harris's felt the meter should have been fixed earlier and the readings should not have been estimated for more than three months. If the meter had been repaired earlier the leak may not have gotten so bad and the bill would not have been so high.

The Commission stated that their roll with the PSD was to appoint members only and that the PSC in Charleston regulated the local district and they should contact the Charleston Office. The Commission also agreed to send a letter to the PSD asking for help with the bill for the Harris's.

Motion by Kevin Helmick to approve six (6) erroneous tax assessments, as approved by the Assessor, the motion was seconded by Robert Weaver. The motion passed unanimously.

The Commission reviewed the Budget Control Report for the period ending October 31<sup>st</sup>, 2007 and made no budget revisions

The commission did not discuss the one time pay increase that was on the agenda.

The changing of three precinct locations was discussed and the Commission decided to give the following notice concerning the changes.

Motion by Kevin Helmick to give notice of the following three precinct changes so that an order to proceed with the changes can be made later, the motion was seconded by Robert Weaver. The motion passed unanimously.

Gary Buchanan, Director of E-911 was present to report to the Commission;

1. The lightning strike damage has all been fixed and the cost is approximately \$67,000.
2. Have gotten one proposal to provide better lightning protection and getting an estimate from another company also.
3. Mr. Buchanan stated that he has attended two meeting during the last week
4. Addressing Grantsville is 85% done, then the data will have to be added to the computer. County wide will be started soon and the fire departments have been talked to concerning doing the work
5. Mr. Buchanan was unable to go to the Flood Plain Workshop and is on the waiting list for June of 08.

There was no report from the Wood Festival Committee.

Kevin Helmick reported on the CRI Board actions and thought that the local office would be kept open and the thrift store. It is also requested that the Commission place money in the agency to help bail it out of its financial problems.

There was no report from the County Park Board, but the Commission discussed the naming of the Park Community Building for Herb Smith for all his work on the project of remodeling the barn to a community building.

The Commission reviewed a Mutual Assistance Agreement and thought it should be signed by the Office of Emergency Services Director, William Stemple and returned to the LEPC.

The Commission discussed the hiring of an Administrative Assistant to the Commission and Kevin Helmick stated that he had spoke to Charles White, Clerk in Roane County and they have a full time person at a salary of \$22,000 but the starting salary is \$17,600. The Commission decided to gather more information concerning job description and salaries before making a decision.

There were no roads to be named.

Josh Johnson, Director of Calhoun County EMS was present to ask the Commission to turn ownership of the old radio tower located behind the EMS Building to the EMS because a radio station wants to lease the tower for an antenna. The Commission stated that the lease could be with the commission and that they would want to review the lease and possibly advertise the lease before agreeing. Mr. Johnson said he would get with the Radio Station and get more details of the project and report to the Commission.

The Commission set Friday November 16<sup>th</sup> as the Thanksgiving Dinner and agreed to provide the turkey and ham.

Motion by Robert Weaver to reappoint Della Nichols and Shirley Mace to the Mt. Zion Public Service District Board for another term, the motion was seconded by Kevin Helmick. The motion passed unanimously.

Motion by Robert Weaver to approve the following lease agreement with the Little Kanawha Area Development Corporation, the motion was seconded by Kevin Helmick. The motion passed unanimously.

### LEASE AGREEMENT

#### OFFICE RENTAL AGREEMENT BETWEEN THE LITTLE KANAWHA AREA DEVELOPMENT CORPORATION AND THE CALHOUN COUNTY COMMISSION

1. **Parties:** This agreement is made and entered into on 11/5/2007, between the Little Kanawha Area Development Corporation hereinafter "Tenant", and the Calhoun County commission, hereinafter "Owner".
2. **Premises:** Subject to the terms and conditions below, Owner rents to tenants, and tenants rent from Owner, for business purposes only, the location known as the LKADC office, located in the lower level, Calhoun Courthouse, Courthouse Square, Grantsville, West Virginia.
3. **Term:** The terms of the rental shall begin on 7/01/07, and shall continue as follows: On an annual basis, the tenancy terminable by Owner or Tenants by the giving of 30 days written notice to the other.
4. **Rent:** On signing this agreement, Tenants shall pay to Owner the sum of 46,000.00 as rent, payable in advance, for the period of 7/1/07 through 6/30/08. Rent shall be paid at the Calhoun County Clerk's Office, Grantsville, West Virginia.
5. **Utilities:** Rent shall cover payment of all utility charges, except for the following, which shall be paid by Tenant: phone service.
6. **Additional Provisions:**

This agreement has been signed on the day and year first written herein.

Ms. Ludwig also gave a report on the work of the Corporation;

The Calhoun Development Corporation has agreed to deed the Little Kanawha Area Development Corporation the property known as the Industrial Park along with the note on the property of approximately \$65,000. There may be some legal questions concerning how the transfer is made and the Commission may have to be party to the transaction.

The next meeting will be December 10<sup>th</sup>, 2007.

Terry Harris stated that the Town of Grantsville Improvement Committee wanted to place flags in the traffic triangle, United States Flag, State Flag and County Flag. Since there is no County Flag there would have to be a contest to develop a County Flag and wanted permission from the Commission to develop a county flag.

Motion by Robert Weaver to allow the Town of Grantsville Improvement Committee to have a contest to create a Calhoun County Flag and to bring the results to the Commission for approval, the motion was seconded by Kevin Helmick. The motion passed unanimously.

Motion by Kevin Helmick to approve the invoices, bills, orders, settlements as presented by the Clerk. The motion was seconded by Robert Weaver, the motion passed unanimously.

**CALHOUN COUNTY  
COMMISSION MEETING  
September 14, 2009**

The meeting of the Calhoun County Commission was called to order on Monday September 14, 2009 at 9:00am by Commission President Robert Weaver. Commissioners Kevin Helmick and Scottie Westfall II were present along with Richard Kirby, County Clerk.

Others present at the meeting were Donald Little, Wayne Hardway, Ronald Lane, Charlie Westfall, Mitchell Stump, Sheri Johnson, Charles McCroskey, Allen Parsons, Norma Collins, Shirley Mace, Diane Ludwig, Maricia Mlynek, Jerry Riggs, Harless Mace, Judy Powell, and Danielle Stevens.

Motion was made by Kevin Helmick to approve the minutes of the Calhoun County Commission meetings held on August 17<sup>th</sup> and August 24<sup>th</sup> 2009 as presented by County Clerk Richard Kirby. The motion was seconded by Scottie Westfall II, the motion passed unanimously.

Motion was made by Kevin Helmick to approve 21 Erroneous Tax Assessments as presented by the Assessor, Jason Nettles. The motion was seconded by Scottie Westfall II, the motion passed unanimously.

Motion made by Kevin Helmick to approve the following land consolidation for tax purposes as approved by the Assessor, Jason Nettles:

1. Chad and Tia Satterfield – Christopher Butt	
Tax Year 2010	Sherman District
Tax Map 19	Parcel 11      6Ac – Phillips
Tax Map 19	<u>Parcel 7</u> 7Ac – Phillips
	Total:            13Acres – Phillips

The motion was seconded by Scottie Westfall II, the motion passed unanimously.

A motion was made by Scottie Westfall II to approve the Sheriff's Settlement for January 2009 to June 2009. The motion was seconded by Kevin Helmick, the motion

**Budget Items**

There were no budget items to discuss at this time.

**Committee Reports**

- a. E-911, LEPC & OES  
No one was present to report.

- b. Wood Festival Committee

Judy Powell asked the Commission for \$207.32 to cover the cost of an outside grill to be located at the Wayne Underwood Field. She informed the Commission that the Calhoun Gilmer Career Center was going to do the work for free and all they were charging for was the cost of materials.

Scottie Westfall II made a motion to give the Wood Festival Committee \$207.32 to build an outside grill. The motion was seconded by Kevin Helmick, the motion passed unanimously.

- c. CRI  
Scottie Westfall II informed the Commission that since the Weatherization program began in April 2009, 83 projects have been completed.

**Appointments to Boards and Authorities**

- a. A motion was made by Scottie Westfall II to appoint William Ellis to the Regional EMS Board. The motion was seconded by Kevin Helmick. The motion passed unanimously.
- b. There were no appointments to the Local Emergency Service Council at this time.
- c. A motion was made by Kevin Helmick to accept the resignation of Della Nichols from the Mt. Zion PSD. The motion was seconded by Scottie Westfall II. The motion passed unanimously.
- d. The Commission went into executive session at 9:30am to review possible applicants to be appointed to the Mt. Zion PSD.

The Commission adjourned from executive session at 9:40am.

A motion was made by Kevin Helmick to appoint Roscoe Gainer as Mt. Zion PSD Member. The motion was seconded by Scottie Westfall II. The motion passed unanimously.

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**Other Reports**

- a. Daniella Stevens informed the Commission that

The Commissioners decided to hold a special meeting concerning the Prevention Resource Officer once the contract was received from Charleston. They will not take any further action in this matter until they have had time to review the contact in its entirety.

**Other Agenda Items**

- a. Richard Kirby informed the Commission that Roget Propst, Calhoun County Middle High School Superintendent, contacted him in regards to asking for support to pave the road from the school to the Board Office. There was a motion made by Kevin Helmick to pass a resolution in support of paving the road from the school to the Board Office. The motion was seconded by Scottie Westfall II. The motion passed unanimously.
- b. Cindy Morgan from Minnie Hamilton Health System informed the Commission that that old hospital records that have been in storage in the Courthouse and at the old BF Goodrich building can be destroyed. At this time Cindy is not sure what the best and or most cost effective method of disposing the records would be. She said that she would contact different places to see what the alternatives are to discuss at the next Commission meeting.
- c. It was noted by Robert Weaver that the Mt. Zion PSD had supplied the Commission with some records that were requested but were not sufficient.

A motion was made following consumer complaints, apparent management issues and failure to comply with WV Code in supplying records, audits and reports to the Calhoun County Commission on behalf of the public, Mt. Zion PSD issues critically need to be resolved.

The Calhoun County Commission therefore requests the West Virginia Public Services Commission to formally investigate the Mt. Zion Public Service District, covering financial management issues, from how money was handled, review audits, record keeping, minutes/decisions made, the hiring of engineers and bidding process.

A motion was made by Kevin Helmick to request a formal investigation of the Mt. Zion PSD. The motion was seconded by Scottie Westfall II. The motion passed unanimously.

Motion was made by Scottie Westfall II to approve the Invoices, Bonds, Wills, Settlements and Orders. The motion was seconded by Kevin Helmick, the motion was passed unanimously.

The next regular Commission meeting is scheduled for Monday October 19<sup>th</sup> 2009 at 1:00p.m.

The Calhoun County Commission meeting was adjourned on Monday September

# CALHOUN COUNTY COMMISSION MEETING

JANUARY 6, 2003

The meeting of the Calhoun County Commission was called to order on Monday January 6, 2003, at 5:00 p.m. by Larry McCallister, President. Other Commissioners present were Rick Sampson and Robert Weaver and Clerk Richard Kirby.

Others present were Fred Rader, Jason Nettles, Tom Shock, Coleman Burrows, Kathryn Burrows, Barry Pitts, Randy Burgess, Diane Ludwig, Lisa Minney, Jennifer Eaton, James Rose and Larry Lee.

Fred Rader from the Mid-Ohio Valley Regional Council was present to hold a hearing for the Hazardous Mitigation Risk Assessment as required by FEMA. The hearing is to gather information concerning risk areas in case of disaster, like areas that flood, snow storm problems and wind storm problems. Mr. Rader had a draft of the assessment that was prepared from information from the Commission and other sources from the County.

The purpose of the program is to set priorities for grants from FEMA to help the County in disasters.

Mr. Rader stated that the Commission needed a group of people to act as an advisory group or a Core Planning Team to help with the plan.

Motion by Robert Weaver to appoint the members of the Local Emergency Planning Commission as the Core Planning Team for preparing the Hazardous Mitigation Plan, the motion was seconded by Larry McCallister. The motion passed unanimously.

The Commission also discussed the Back Fork/ Yellow Creek water line project with Mr. Rader and he stated that he felt that the project needed more applications for water taps before the project could move ahead.

Motion by Robert Weaver to approve the minutes of the December 2<sup>nd</sup> and December 20<sup>th</sup>, 2002 meetings, the motion was seconded by Larry McCallister. The motion passed unanimously.

Motion by Rick Sampson to elect Robert Weaver as President of the Calhoun County Commission for the year of 2003, the motion was seconded by Larry McCallister. The motion passed unanimously.

Larry Lee and James Rose from the Mid-Ohio Valley Department of Health and Jennifer Eaton from the Red Cross were present to inform the Commission about some programs concerning public health and the risks of terrorism. Mr. Rose stated that there were 50 tons of medical supplies in different locations that could be moved to an affected area in case of an emergency. He also stated that the employees in the area hospitals were to be given shots for smallpox and then first responders. There are 138,000 people in the six county area covered by the Health Department and in case of emergency it could take up to four days to give every one a shot. Mr. Lee stated that he would keep the Commission informed about future programs.

The Commission also discussed the Wayne Underwood monument at the old field and that the School wants to move it to the new field. The Commission agreed that there would be no problem in moving it or leaving it there until they were ready to move it.

Barry Pitts gave a report on the E-911 addressing and that Ellen Wade a mail carrier was working on her area. Mr. Pitts stated that he was still unable to contact Mr. McKenzie, who had the contract to do the address and then went bankrupt, concerning the final addressing. The Commission suggested that Mr. Pitts contact the State E-911 Board concerning the problem.

Motion by Robert Weaver to make the following Board appointments;

Local Emergency Planning Commission

- Marvin Stemple
- Nina Smith
- Larry McCallister

Lights on Committee

- Rick Sampson

Work Force Investment Board

- Robert Weaver

Community Resources Board

- Rick Sampson

Mid-Ohio Valley Regional Council

- Larry McCallister

West Virginia University Extension Service Board

- Rick Sampson

Little Kanawha Area Development Board

- Larry McCallister

Pleasant Hill Public Service District Board

- Dale Cunningham 6 year term
- Dennis Dickson 4 year term
- Terry Dye 2-year term

Mt. Zion Public Service District Board

- Shirley Mace 6 year term
- Della Nichols 4 year term
- Sharon Postalwait 2 year term

The motion was seconded by Rick Sampson, the motion passed unanimously.

Motion by Robert Weaver to submit the following list to the Legislators as the requests most important to the Commission for grants;

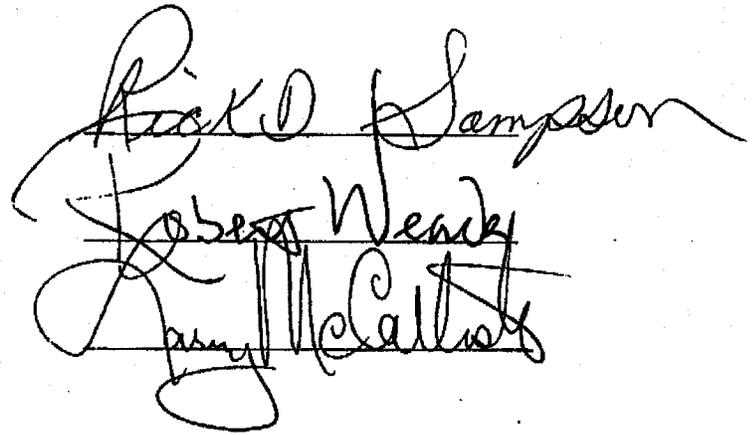
1. \$100,000.00 for the proposed Emergency Services Building
2. \$ 40,000.00 for computer support for Assessment Office

Motion by Robert Weaver to approve Diane Ludwig, director of the Little Kanawha Area Development group applying for a grant for the Grantsville VFD fire truck since she is going through the same process in Wirt County, the motion was seconded by Rick D, Sampson. The motion passed unanimously.

Motion by Robert Weaver to approve the Bills, Bonds, Wills, Settlements, and Orders as presented by the Clerk, the motion was seconded by Rick D. Sampson. The motion passed unanimously.

The meeting was adjourned at 7:10 p.m. on Monday January 6<sup>th</sup>, 2003.

**APPROVED BY:**

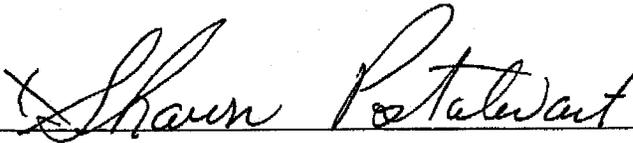
Three handwritten signatures are written over three horizontal lines. The top signature is 'Rick D. Sampson', the middle is 'Robert Weaver', and the bottom is 'Amy McCallister'.



**OATH**

State of West Virginia, County of Calhoun ss:

I, Sharon C. Postalwait, do solemnly swear that I will support the constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of my office of Mt. Zion PSD for the County of Calhoun. To the best of my skill and judgment so help me God.

  
\_\_\_\_\_

Subscribed and sworn to before the undersigned, this 18<sup>th</sup> day of June, 2009.

  
\_\_\_\_\_

Clerk of County Commission, Calhoun County, W. Va.

OATH

State of West Virginia, County of Calhoun ss:

I, Roscoe Gainer, do solemnly swear that I will support the constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of my office of **Mt. Zion Public Service District Board** to the best of my skill and judgment so help me God.

  
\_\_\_\_\_

Subscribed and sworn to before the undersigned, this 23rd day of September, 2009.

  
\_\_\_\_\_

Clerk of County Commission, Calhoun County, W. Va.

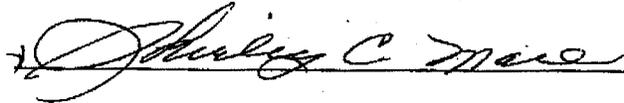
004 007 PAGE 516

OATH

RICHARD KIRBY  
CALHOUN County 01:21:23 PM  
Instrument No 3502  
Date Recorded 03/06/2008  
Document Type OATH  
Book-Page -  
Rec/Preserve \$0.00 \$0.00

State of West Virginia, County of Calhoun ss:

I, **Shirley C. Mace**, do solemnly swear that I will support the constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of my office of **Mt. Zion PSD for the County of Calhoun**. To the best of my skill and judgment so help me God.

  
\_\_\_\_\_

Subscribed and sworn to before the undersigned, this 6<sup>th</sup> day of March, 2008.

  
\_\_\_\_\_

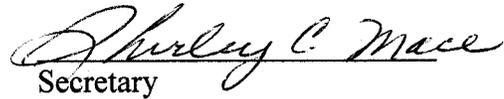
Clerk of County Commission, Calhoun County, W. Va.



CERTIFICATION

I, Shirley C. Mace, Secretary of the Public Service Board of the Mt. Zion Public Service District, hereby certify that the foregoing is a true and correct copy of the Rules of Procedure of said Public Service Board. I further certify that such Rules of Procedure remain in full force and effect and have not been amended or repealed.

WITNESS my signature as of the 26<sup>th</sup> day of April, 2010.

  
Secretary

## RULES OF PROCEDURE

### MT. ZION PUBLIC SERVICE DISTRICT

#### ARTICLE I

##### NAME AND PLACE OF BUSINESS

Section 1. Name: Mt. Zion Public Service District (the "District")

Section 2. The principal address of the District will be P.O. Box 122, Grantsville, Calhoun County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Mt. Zion Public Service District, and in the center "seal" as follows:

Section 4. The fiscal year of the District shall begin the 1st day of July in each year and shall end on the following June 30.

#### ARTICLE II

##### PURPOSE

The District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

#### ARTICLE III

##### MEMBERSHIP

Section 1. The members of the Public Service Board (the "Board") of the District shall be those persons appointed by The County Commission of Calhoun County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

## ARTICLE IV

### MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board of the District shall hold regular monthly meetings on the second Wednesday of each month at 6:00 p.m. at such location as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Board of the District, 2 members shall constitute a quorum. Each member of the Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members by letter or telephone shall be required for special meetings. Unless otherwise waived, notice in writing of each special meeting of the membership shall be given to all members by the Secretary by mailing the same to the last known post office addresses of the members at least 2 days before the date fixed for such meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

Section 4. At the regular meetings of the Board, the following shall be the order of business:

1. Roll call.
2. Reading and approval of the Minutes of the previous meeting.
3. Bills and communications.
4. Reports of the Secretary and Treasurer.
5. Reports of committees.
6. Unfinished business.
7. Adjournment.

Section 5. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended, notice of the time and place of all regularly scheduled meetings of the Board, and the time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public as follows:

A. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for the regular meetings of the Board of the time and place fixed and entered of record by the Board for the holding of regularly scheduled meetings and may be posted at the front door of the Calhoun County Courthouse. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or

postponement shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation or postponement has occurred.

B. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for any special meetings of the Board, at least 48 hours before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held and may be posted at the front door of the Calhoun County Courthouse. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation has occurred.

C. The form of notice for posting as to a special meeting may be generally as follows:

MT. ZION PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL MEETING

The Public Service Board of Mt. Zion Public Service District will meet in special session on \_\_\_\_\_, 199\_, at \_\_\_\_\_.m., prevailing time, at \_\_\_\_\_, \_\_\_\_\_, West Virginia, for the following purposes:

1. To consider and act upon a proposed Bond Resolution providing for the issuance of a Water Revenue Bond, Series \_\_\_\_\_, of the District, in the principal amount of \$\_\_\_\_\_ to provide funds for construction of water distribution facilities of the District.

2. To authorize the Chairman and Secretary of the Board to sign such documents as may be required to accomplish the purposes set forth above.

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 19\_\_

D. Notice to any news media which requests such notices or regularly attends such meetings may be given by mailing or telecopying a copy of such notice to the address or fax number furnished in writing to the District by such news media.

## ARTICLE V

### OFFICERS

Section 1. The officers of the Board shall be a Chairman, Secretary and Treasurer. The Chairman shall be elected from the members of the Board. The Secretary and Treasurer need not be members of the Board and may be the same person.

Section 2. The officers of the Board shall be elected each year by the members at the first meeting held in the month of January of such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected as hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Board. He shall, together with the Secretary, sign the minutes of all meetings at which he shall preside. He shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him by the Board, by these Rules of Procedure, or prescribed by law. He shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairman is absent from any meeting, the remaining members of the Board shall select a temporary chairman.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. He shall, together with the Chairman, sign the minutes of the meetings at which he is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other writings and papers of the Board. He shall also perform such other duties as he may have under law by virtue of his office or as may be conferred upon him from time to time by the members of the Board.

Section 4. All resolutions shall be in writing and shall be copied in minutes of the meetings of the Board, and the voting on all questions coming before the Board shall be by roll call, and the Ayes and Nays shall be entered upon the minutes of such meeting.

Section 5. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

## ARTICLE VII

### AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present voting for the amendment; but no such change, alteration, amendment or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment or addition and a clear statement of the substance thereof has been included in the written notice calling such meeting.



\$600,000  
 MT. ZION PUBLIC SERVICE DISTRICT  
 WATER REVENUE BOND  
 SERIES 2009 A  
 and  
 \$850,000  
 MT. ZION PUBLIC SERVICE DISTRICT  
 WATER REVENUE BOND  
 SERIES 2009 B

BOND RESOLUTION

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MT. ZION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SERVICE PROPERTIES AND ISSUANCE OF PARITY WATER REVENUE BOND, SERIES 2009 A, AND WATER REVENUE BOND, SERIES 2009 B, IN THE PRINCIPAL AMOUNTS OF \$600,000 AND \$850,000, RESPECTIVELY, TO FINANCE THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO A PUBLIC WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE 2009 BONDS; PLACING LIMIT ON SALE OF SYSTEM; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDER OF THE 2009 BONDS; PROVIDING STATUTORY LIEN ON REVENUES AND SYSTEM; PROVIDING FOR THE ADOPTION, RATIFICATION, APPROVAL AND COLLECTION OF RATES AND CHARGES FOR THE PUBLIC WATER SYSTEM; AND PROVIDING GENERAL TERMS AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT.

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT, CALHOUN COUNTY, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code, as amended (the "Act") and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. Mt. Zion Public Service District (the "PSD" or "Issuer") is a public service district created, expanded and contracted pursuant to the Act by orders issued by The County Commission of Calhoun County, located in Calhoun County, West Virginia.

B. The Issuer now has a public water system and desires to improve and expand that system and it is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, betterments and improvements to the existing public water system of the Issuer known as the "System" (sometimes referred to herein as the "System") so as to improve the public health, comfort and convenience of residents of the Public Service District, including the construction and installation of all necessary appurtenant facilities (the "Project"), and generally described as water line extensions, pumps, pumping stations, water plant improvements and necessary appurtenances particularly described in and

according to the plans and specifications prepared by the Consulting Engineer for the Project and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. It is necessary for the Issuer to issue its revenue bonds in the principal amounts of \$600,000 and \$850,000 to finance a portion of the cost of such construction in the manner hereinafter provided.

D. The estimated maximum cost of the construction of the Project is \$5,200,000, which will be obtained from the proceeds of sale of the Series 2009 A and the Series 2009 B Bonds herein authorized and from grants to be made by RUS in the amounts of \$1,800,000 and \$450,000, and a grant from the HUD - Small Cities Block Grant Program, as hereinafter defined, in the amount of \$1,500,000. The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or any interest therein; interest on the 2009 Bonds prior to, during and for six (6) months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized hereby.

E. The period of usefulness of the System after completion of the Project is not less than forty (40) years.

F. There are currently outstanding the obligations of the Issuer with which the 2009 Bonds, as hereinafter defined, will rank on a parity as to lien and source of and security for payment as follows:

(i) Waterworks Revenue Bonds, Series B(1974), of the Issuer, dated January 10, 1974 (the "1974 Bond") issued in the original principal amount of \$40,000 secured under the terms of the 1974 Resolution (hereinafter defined);

(ii) Water Revenue Bonds, Series 1984, of the Issuer, dated February 2, 1984 (the "1984 Bond") issued in the original principal amount of \$161,000 secured under the terms of the 1984 Resolution (hereinafter defined); and

(iii) Water Revenue Bonds, Series 1998 of the Issuer, dated May 20, 1998 (the "1998 Bond") issued in the original principal amount of \$40,000 secured under the terms of the 1998 Resolution (hereinafter defined).

With the exception of the bonds described above, there are no other outstanding bonds or obligations of the Issuer, which will rank prior to or on parity with the 2009 Bonds as to lien, pledge and/or source of and security for payment.

G. The Issuer is not in default under the terms of the 1974 Resolution, the 1984 Resolution and the 1998 Resolution or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has obtained a sufficient and valid waiver thereof.

H. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the 2009 Bonds (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the 2009 Bonds, or will have so complied prior to issuance of the 2009 Bonds including, among other things, the imposition of rates and charges, the consent and approval, pursuant to the Act, of the issuance of the 2009 Bonds by the Public Service Commission of West Virginia by final order.

J. It is in the best interests of the Issuer that the 2009 Bonds be sold to the United States Department of Agriculture, Rural Development, acting on behalf of the Rural Utilities Service (the "Purchaser" or "RUS"), pursuant to the terms and provisions of a letter of conditions dated July 1, 2002, as amended by Amendment No. 1 to Letter of Conditions dated May 18, 2007, and all amendments thereto (collectively, the "Letter of Conditions").

K. The Issuer has been notified by RUS that interim construction financing for the Project is not required.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the 2009 Bonds by the Purchaser, this Resolution (the "Resolution") shall be deemed to be and shall constitute a contract between the Issuer and the Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the 2009 Bonds.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code, as amended.

"2009 Bonds" or "2009 Series Bonds" means the \$600,000 Mt. Zion Public Service District, Water Revenue Bond, Series 2009 A, and the \$850,000 Mt. Zion Public Service District, Water Revenue Bond, Series 2009 B, authorized by this resolution.

"Bonds" means the 1974 Bond, the 1984 Bond, the 1998 Bond and the 2009 Bonds.

"1974 Bond" means the outstanding bond of the Issuer dated January 10, 1974, described in Section 1.02 F. (ii) herein.

“1984 Bond” means the outstanding bond of the Issuer dated February 2, 1984, described in Section 1.02 F. (iii) herein.

“1998 Bond” means the outstanding bond of the Issuer dated May 20, 1998, described in Section 1.02 F. (iv) herein.

“Chairperson” means the Chairperson of the Governing Body.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineer” means Boyles & Hildreth, Spencer, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

“Costs” or “Costs of the Project” means those costs described in Section 1.02 hereof to be a part of the cost of acquisition and construction of the Project.

“Depository Bank” means initially Calhoun County Bank, Grantsville, West Virginia, a bank or trust company, which is a member of FDIC and its successors and assigns or such other qualified bank or trust company designated now or hereafter by Issuer.

“Facilities” or “water facilities” means all the land and tangible properties of the System and also any tangible properties which may hereafter be added to the water system by addition, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

“FDIC” means the Federal Deposit Insurance Corporation.

“Fiscal Year” means each year beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Public Service Board of the Issuer.

“Government Obligations” means direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

“Herein” means in this Resolution.

“Holder of the Bond” or any similar term means any person who shall be the registered owner of the 2009 Bonds.

“Issuer” or “PSD” means Mt. Zion Public Service District, Calhoun County, West Virginia, and, where appropriate, also means the Governing Body.

“Letter of Conditions” means the Letter of Conditions of the United States Department of Agriculture, dated July 1, 2002, as amended by Amendment No. 1 to Letter of Conditions dated May 18, 2007, and any other amendments thereto.

“Net Revenues” means the balance of the gross revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

“Operating Expenses” means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the 2009 Bonds and into the Reserve Fund and Depreciation Reserve have been made to the last monthly payment date prior to the date of such retention.

“Prior Bonds” means, collectively, the 1974 Bond, 1984 Bond and 1998 Bond.

“Prior Resolutions” means, collectively, 1974 Resolution, 1984 Resolution and 1998 Resolution.

“Project” shall have the meaning stated in Section 1.02 B. above.

“Purchaser”, “RUS”, or “Government” means United States of America, United States Department of Agriculture, Rural Utilities Service, and any successor thereof.

“Qualified Investments” means and include any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidence of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C, of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registrar" or "Bond Registrar" means the Issuer, which usually shall act by its Secretary.

"Resolution" means this Resolution and all resolutions supplemental hereto.

"1974 Resolution" means the resolution providing for the 1974 Bond, adopted January 10, 1974.

"1984 Resolution" means the resolution providing for the 1984 Bond, adopted February 2, 1984.

"1998 Resolution" means the resolution providing for the 1998 Bond, adopted May 19, 1998.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting principles.

"Secretary" means the Secretary of the Governing Body.

"System" means the Project initially, and all existing water facilities owned by the Issuer and all Facilities and other property of every nature, real or personal, now or hereafter acquired and/or owned, held or used in connection with the System, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a public water system; and shall also include any and all additions, extensions, improvements, replacements, properties or other facilities at any time acquired or constructed for said water system after completion of the Project.

"Tap Fees" means the fees, if any, paid by prospective customers of the system in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations; words importing the masculine, feminine or neuter genders shall include any other gender; and any requirement for execution, sealing and/or attestation of the Bond or any certificate or other document by the Secretary shall mean that such Bond certificate or other document may be executed, sealed and/or attested by an Acting Secretary.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$5,200,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bond hereby authorized shall be applied as provided in Article V hereof.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUANCE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the 2009 Bonds of the Issuer to be known as "Mt. Zion Public Service District, Water Revenue Bond, Series 2009 A" in the principal amount of \$600,000, and "Mt. Zion Public Service District, Water Revenue Bond, Series 2009 B" in the principal amount of \$850,000, are hereby authorized to be issued for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 3.02. Description of Bonds. The 2009 Bonds shall be issued as separate registered bonds, No. AR-1 and No. BR-1, and shall be dated on the date of delivery. The 2009 Bonds shall bear interest from date, payable monthly at a maximum rate of four and 125/100 percent (4.125%) per annum or such lower rate that RUS will make available at closing, and shall be sold for the par value thereof but in no event greater than four and 125/100 percent (4.125%) per annum.

The 2009 Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer and shall be payable as provided in the Bond forms hereinafter set forth.

Section 3.03. Execution of Bonds. The 2009 Bonds shall be executed in the name of the Issuer by its Chairperson, and its corporate seal shall be affixed thereto and attested by its Secretary, and the Chairperson and the Secretary are hereby authorized to execute the 2009 Bonds and such other documents as are necessary to finalize this transaction. In case any one or more of the officers who shall have signed or sealed the 2009 Bonds shall cease to be such officer of the Issuer before the 2009 Bonds so signed and sealed have been actually sold and delivered, such 2009 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such 2009 Bonds had not ceased to hold such office. Any 2009 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such 2009 Bonds shall hold the proper office of the Issuer, although at the date of such 2009 Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Negotiability, Registration, Transfer and Exchange of Bonds. The 2009 Bonds shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, but the 2009 Bonds may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.05 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the 2009 Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar. No interest in the 2009 Bonds shall be transferable except by means of transfer of registration of a Bond representing such interest and delivery of a new Bond or Bonds in exchange therefor in accordance with this Bond Resolution.

Whenever the 2009 Bonds shall be surrendered for registration or transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration or transfer of the 2009 Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on that Bond.

Section 3.05. Registrar. The Issuer shall be the Bond Registrar and will keep or cause to be kept by its agent at its office, sufficient books for the registration and transfer of the 2009 Bonds, and upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register the 2009 Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the 2009 Bonds as hereinbefore provided.

The Registrar shall accept the 2009 Bonds for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or social security numbers of the settlor and beneficiaries of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bond or Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond or Bonds of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his, her or its ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bonds Secured by Pledge of Revenues. The payment of the debt service of the 2009 Bonds shall be secured forthwith by a parity lien with the 1974 Bond, the 1984 Bond and the 1998 Bond on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for. The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the 2009 Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the 2009 Bonds as the same become due.

Section 3.08. Forms of Bonds. Subject to the provisions hereof, the text of the 2009 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any supplemental resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF A BOND)

\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 2009 A

No. AR-1

Date: December \_\_, 2009

FOR VALUE RECEIVED, the MT. ZION PUBLIC SERVICE DISTRICT, a public service district created, expanded and contracted pursuant to the Act by orders issued by The County Commission of Calhoun County, in Calhoun County, West Virginia (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government"), or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Six Hundred Thousand and 00/100 Dollars (\$600,000), plus interest on the unpaid principal balance at the rate of four and 125/100 percent (4.125%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,754.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder

promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a water system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B(1974), WATER REVENUE BONDS, SERIES 1984, WATER REVENUE BOND, SERIES 1998, AND WATER REVENUE BOND, SERIES 2009 B OF THE ISSUER DESCRIBED IN THE RESOLUTIONS ISSUED WITH RESPECT TO EACH SERIES.

The initial address of Government for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

By: \_\_\_\_\_  
Chairperson  
P.O. Box 122  
Grantsville, WV 26147

ATTEST:

By: \_\_\_\_\_  
Secretary

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$	12/__/09	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
		TOTAL \$	_____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

(FORM OF B BOND)

\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 2009 B

No. BR-1

Date: December \_\_, 2009

FOR VALUE RECEIVED, the MT. ZION PUBLIC SERVICE DISTRICT, a public service district created, expanded and contracted pursuant to the Act by orders issued by The County Commission of Calhoun County, in Calhoun County, West Virginia (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government"), or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000), plus interest on the unpaid principal balance at the rate of four and 125/100 percent (4.125%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$3,698.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder

promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a water system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B(1974), WATER REVENUE BONDS, SERIES 1984, WATER REVENUE BOND, SERIES 1998, AND WATER REVENUE BOND, SERIES 2009 A OF THE ISSUER DESCRIBED IN THE RESOLUTIONS ISSUED WITH RESPECT TO EACH SERIES.

The initial address of Government for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

By: \_\_\_\_\_  
Chairperson  
P.O. Box 122  
Grantsville, WV 26147

ATTEST:

By: \_\_\_\_\_  
Secretary

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$	12/__/09	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
		TOTAL \$	_____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

## ARTICLE IV

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created or continued and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Construction Fund.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created or continued with the Commission:

- (1) Series 2009 Bonds Sinking Fund;
  - (a) Within the Series 2009 Bonds Sinking Fund, the Series 2009 Bonds Reserve Account.

### Section 4.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the System Revenue Fund established herein. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first each month transfer from the Revenue Fund to the Operation and Maintenance Fund the amount necessary and sufficient to pay current Operating Expenses.

(2) The Issuer shall next, each month, on or before the due date of payment of each installment on the 2009 Bonds, transfer from the Revenue Fund and remit to the National Finance Office designated in the 2009 Bonds (or such other place as may be provided pursuant to the 2009 Bonds), the amount required to pay the interest on the 2009 Bonds, and to amortize the principal of the 2009 Bonds and the Prior Bonds over the respective lives of each bond issue. All payments with respect to principal of and interest on the 2009 Bonds and the Prior Bonds shall be made on an equal pro rata basis in accordance with the respective aggregate principal amount thereof outstanding and on parity with each other. There is hereby created a sinking fund at the Depository Bank into which the Issuer shall deposit sufficient

amounts from the Revenue Fund to pay the interest on the 2009 Bonds and to amortize the principal of the 2009 Bonds and the Prior Bonds over the remaining respective lives of each bond issue. As long as the Government owns the 2009 Bonds, such deposits can be replaced by the remittances described above.

(3) The Issuer shall next, on the first day of each month, commencing one (1) month prior to the first date of payment of principal and interest of the 2009 Bonds, if not fully funded upon issuance of the 2009 Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, on a pro rata basis with the Prior Bonds, for deposit into the Series 2009 Bonds Reserve Account, an amount equal to .4167% of the Series 2009 Bonds Reserve Requirement on a parity with the Prior Bonds; provided, that no further payments shall be made into the Series 2009 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 Bonds Reserve Requirement.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, transfer to the Renewal and Replacement Fund .4167% of the amount of the Series 2009 Bonds Reserve Requirement, exclusive of any payments into the Series 2009 Bonds Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments, as defined herein. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 2009 Bonds Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof,] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2009 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, as the same shall become due. Moneys in the Series 2009 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the 2009 Bonds, as the same shall come due, when other moneys in the attendant Series 2009 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 2009 Bonds Sinking Fund and Series 2009 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective series of bonds, and then to the next ensuing principal payments due thereon.

Except with respect to transfers to the Rebate Fund permitted hereunder, any withdrawals from the Series 2009 Bonds Reserve Account which result in a reduction in the balance of the

Series 2009 Bonds Reserve Account to below the Series 2009 Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full, to the Series 2009 Bonds Sinking Fund for payment of debt service on the 2009 Bonds.

B. As and when additional bonds ranking on a parity with the 2009 Bonds and the Prior Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum provided and required to be paid into the Sinking Fund in any year for account of the bonds of such series, including such additional bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 2009 Bonds Sinking Fund or into the Series 2009 Bonds Reserve Account therein when the aggregate amount of funds in said Series 2009 Bonds Sinking Fund and Series 2009 Bonds Reserve Account are at least equal to the aggregate principal amount of the 2009 Bonds issued pursuant to this Resolution then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 Bonds Sinking Fund created hereunder, and all amounts required for said Series 2009 Bonds Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Series 2009 Bonds Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

Moneys in the Series 2009 Bonds Reserve Account shall be invested and reinvested by the Commission in Qualified Investments, as defined herein.

The Series 2009 Bonds Sinking Fund, including the Series 2009 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the 2009 Bonds and any additional bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Series 2009 Bonds Sinking Fund, including the Series 2009 Bonds Reserve Account therein and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Such Surplus Revenues shall be used to redeem the Bonds or for any lawful purposes of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Commission's fees, the Registrar's fees, the Paying Agent's fees and the Depository Bank's charges then due.

E. Calhoun County Bank is hereby designated the Depository Bank. The Commission is hereby designated as Paying Agent for the 2009 Bonds.

F. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

I. The Gross Revenues of the System shall only be used for purposes of the System.

J. All Tap Fees shall be deposited by the Issuer, as received, in the Construction Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

Section 4.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the 2009 Bonds not required by the Project in the Series 2009 Bonds Reserve Account or as otherwise directed by RUS.

## ARTICLE V

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 5.01. Application of Bond Proceeds. From the moneys received from time to time from the sale of any or all of the 2009 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the 2009 Bonds, there shall be deposited with the Commission in the Series 2009 Bonds Reserve Account the sum, if any, required hereunder for funding the Series 2009 Bonds Reserve Account.

B. The remaining moneys derived from the sale of the 2009 Bonds shall be deposited by the Issuer as received from time to time in the Construction Fund established hereunder.

C. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in this Resolution. Except with respect to any transfers to the Rebate Fund, moneys in the Construction Fund shall be used solely to pay Costs of the Project and, until so transferred or expended, are hereby pledged as additional security for the 2009 Bonds.

Section 5.02. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

On or before the Closing Date, the Issuer shall have delivered to RUS a report listing the specific purposes for which the proceeds of the 2009 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 5.01 hereof, disbursements from the Construction Fund shall be made only after submission to, and approval from, RUS of the following:

- (1) a completed and signed "Payment Requisition Form," and
- (2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:
  - (A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
  - (B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
  - (C) That each of such costs has been otherwise properly incurred; and
  - (D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

Until disbursed by the Issuer, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VI

### GENERAL COVENANTS

Section 6.01. General Statement. So long as the 2009 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the 2009 Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 6.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce net revenues equal to not less than one hundred ten percent (110%) percent of the annual debt service on the 2009 Bonds and to make the payments required herein into the Reserve Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 6.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the 2009 Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 6.04. Issuance of Additional Parity Bonds or Obligations. No additional parity bonds or obligations payable out of the revenues of the System or any part thereof shall be issued after the issuance of the 2009 Bonds pursuant hereto except with the prior written consent of the Purchaser or the then holder of or Trustee or agent for the holder of the 2009 Bonds.

Section 6.05. Insurance and Bond. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the 2009 Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Real Property Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and

subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$1,000,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the 2009 Bonds.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$1,000,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workers' Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of one hundred percent (100%) of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of Calhoun County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation insurance will be maintained as required by the laws of the State of West Virginia.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and every officer and employee of the PSD having custody of the Revenue Fund or of any revenues or other funds of the System in an amount at least equal to the total annual debt service requirements for all outstanding RUS loans.

(f) Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer.

(g) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the 2009 Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 6.06. Statutory Mortgage. For the further protection of the holder of the 2009 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the 2009 Bonds.

Section 6.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of any monthly amortization installment at the date specified for payment thereof; and/or

(B) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the 2009 Bonds or herein, or violation of or failure to observe any provision of any pertinent law or of this or the other Bond Resolutions.

Section 6.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights and shall have all rights prescribed by the Act, W.Va. Code and other applicable law.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The Receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 6.09. Fiscal Year; Budget. While the 2009 Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty (30) days prior to the beginning of each fiscal year, the Issuer agrees to adopt an Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted an Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of an Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten percent (10%); and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 6.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to

any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 6.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 6.12. Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer further covenants to comply with the Act with respect to such books, records and accounts.

Section 6.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the 2009 Bonds are outstanding.

Section 6.14. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

## ARTICLE VII

### RATES, RULES, COVENANTS, ETC.

#### Section 7.01. Initial Schedule of Rates and Charges.

A. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in an Order of the Public Service Commission dated May 23, 2007, which Order became effective for service rendered on or after May 23, 2007, in Case Number 06-1764-PWD-30B, which Order is incorporated herein by reference, which tariff was issued by the Issuer on June 4, 2007, and is made a part hereof.

B. The Issuer hereby confirms the rates and charges as set out in the above-referenced order and included on a tariff sheet filed with the Public Service Commission, which rates and conditions are as follows:

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY

Available for general, domestic, commercial, industrial and sale for resale water service.

RATES (customers with metered water supply)

First	2,000gallons used per month	\$8.18 per 1,000 gallons
Next	8,000gallons used per month	\$8.06 per 1,000 gallons
All over	10,000 gallons used per month	\$7.93 per 1,000 gallons

MINIMUM CHARGE

No monthly bill will be rendered for less than \$15.56 per month.

5/8inch meter	\$ 15.56 per month
3/4inch meter	\$ 23.34 per month
1 inch meter	\$ 38.90 per month
1 - 1/2inch meter	\$ 77.80 per month
2 inch meter	\$ 124.48 per month
3 inch meter	\$ 233.40 per month
4 inch meter	\$ 389.00 per month
6 inch meter	\$ 778.00 per month
8 inch meter	\$1,244.80 per month

The above minimum charges are subject to an additional \$0.40 (forty cents) per thousand gallons used per month.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RECONNECTION

\$20.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$250.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap service.

### LEAK ADJUSTMENT

\$3.93 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

### RETURN CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

### Section 7.02. Further Covenants

The Issuer hereby further covenants and agrees as follows:

- A. There shall not be any discrimination or differential in rates between customers in similar circumstances.
- B. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.
- C. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.
- D. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have such remedies and powers as are provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.
- E. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Defeasance of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the 2009 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Resolution, then with respect to the 2009 Bonds, the pledge of Net Revenues and other moneys and securities pledged under this Bond Resolution and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the 2009 Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied. Except through such direct payment to the Holder of the Bonds, the Issuer may not defease the 2009 Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 8.02. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the 2009 Bonds, the Issuer shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter shall file such Financing Statements in the office of the Secretary of State of West Virginia.

Section 8.03. Delivery of Bonds. The Chairperson and Secretary of the Governing Body are hereby authorized and directed to cause the Series 2009 A Bond, numbered AR-1, and the Series 2009 B Bond, numbered BR-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 8.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the 2009 Bonds.

Section 8.05. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 8.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 8.07. Modification or Amendment. The Bond Resolution may not be modified or amended in any material manner after final passage without the prior written consent of the Purchaser and/or holder of the 2009 Bonds.

Section 8.08. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken

precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State applicable thereto; and that the Chairperson, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 8.09. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Resolution.

Section 8.10. Effective Time. This Resolution shall take effect immediately upon its adoption.

Section 8.11 Statutory Notice of Meeting and Bond Issue. An abstract of this Bond Resolution, determined by the Governing Body to contain sufficient information as to give notice of the contents hereof, has been published once in a qualified newspaper published and of general circulation in the Mt. Zion Public Service District, together with a notice stating that this Bond Resolution will be considered, that the Issuer contemplates the issuance of the 2009 Bonds, that any person interested may appear before the Public Service Board upon a date certain, not less than ten (10) days subsequent to the date of publication of such abstract of this Bond Resolution and notice, and present protests, and that a certified copy of the Resolution is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such meeting, all objections and suggestions were heard, and the Governing Body took such action, as it shall deem proper in the premises.

[SEAL]

Attest:

MT. ZION PUBLIC SERVICE DISTRICT

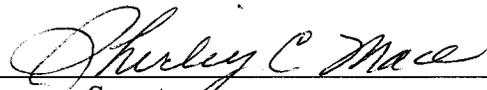
By: *Shaun K. Stewart*  
Chairperson

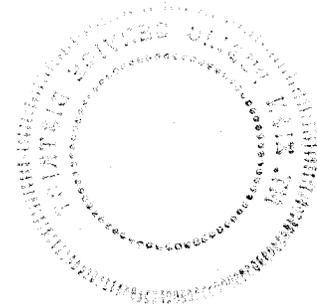
By: *Shirley C. Mace*  
Secretary

CERTIFICATION

I, Wilma Mace, Secretary of the Mt. Zion Public Service District, hereby certify that the foregoing is a true and correct copy of a Resolution approved at a meeting of the Public Service Board of the Mt. Zion Public Service District held on November 28, 2009. I further hereby certify that the action of said Public Service Board set forth therein remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 28<sup>th</sup> day of November, 2009.

  
Secretary



MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2010

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING FOR TRANSFER OF THE RESERVE  
ACCOUNTS FOR PRIOR BONDS, AMENDMENT OF PRIOR RESOLUTIONS TO  
EFFECT SUCH TRANSFERS AND DESIGNATION OF CURRENT BONDS

WHEREAS, the Mt. Zion Public Service District (the "Issuer") has previously issued its Waterworks Revenue Bonds, Series B (1974), dated June 24, 2010, in the original aggregate principal amount of \$40,000, Water Revenue Bonds, Series 1984, dated February 2, 1984, in the original principal amount of \$161,000, and Water Revenue Bonds, Series 1998, dated May 20, 1998, in the original principal amount of \$40,000 (collectively the "Prior Bonds"), which Prior Bonds are owned and held by the United States Department of Agriculture (the "Purchaser");

WHEREAS, on November 28, 2009, the Issuer approved the issuance of parity bonds, designated as Water Revenue Bond, Series 2009 A, in the original principal amount of \$600,000, and Water Revenue Bond, Series 2009 B, in the original principal amount of \$850,000 (the "Current Resolution");

WHEREAS, the Current Resolution authorized the issuance of bonds that will be dated April 22, 2010, will be sold to the Purchaser and shall be designated, collectively, as the "Series 2010 Bonds";

WHEREAS, the Prior Bonds are secured by reserve accounts pledged for the payment of principal of and interest on the Prior Bonds (hereinafter referred to as the "Bond Reserve Accounts"), which accounts are, pursuant to the Prior Resolutions of the Issuer, hereinafter defined, adopted on January 14, 1974, February 2, 1984, and May 19, 1998, authorizing the Prior Bonds (collectively, the "Prior Resolutions"), held by the Depository Bank;

WHEREAS, the Series 2010 Bonds will be secured by a reserve account also pledged for the payment of principal of and interest on the Series 2010 Bonds;

WHEREAS, the Purchaser has requested that the Issuer transfer the monies in the Bond Reserve Accounts from the Depository Bank to the West Virginia Municipal Bond Commission (the "Commission") and establish a similar account with the Commission for the Series 2010 Bonds;

WHEREAS, the Prior Resolutions and the Current Resolution provide that they may be amended by supplemental resolution with the prior written consent of the Purchaser, and such consent has been received by the Issuer; and

WHEREAS, the Public Service Board of the Mt. Zion Public Service District deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted.

**NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE MT. ZION PUBLIC SERVICE DISTRICT:**

Section 1. The Prior Resolutions and the Current Resolution are amended, as necessary, to reflect the following:

A. The parity bonds approved by the Current Resolution shall be designated as the Series 2010 Bonds.

B. The Bond Reserve Accounts for the Prior Bonds and the Series 2010 Bonds shall be held by the Commission.

C. The Commission is designated as the Fiscal Agent for the administration of the Bond Reserve Accounts as herein provided, and all amounts required for the Bond Reserve Accounts will be deposited therein by the Issuer upon the transfer of funds from the Revenue Fund at the times provided herein and in the Prior Resolutions and the Current Resolution. If required by the Purchaser at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder and thereunder.

D. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required reserve account payments with respect to the Prior Bonds and the Series 2010 Bonds, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Supplemental Resolution.

E. Moneys in the Bond Reserve Accounts shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

F. Earnings from moneys in the Bond Reserve Accounts, so long as the Minimum Reserve is on deposit in each such account and maintained therein, shall be returned not less than once each year by the Commission to the Issuer, to be deposited in the Revenue Fund.

G. The Issuer shall remit from the Revenue Fund to the Commission such additional sums as shall be necessary to pay the charges and fees of the Commission then due.

H. All remittances made by the Issuer to the Commission or the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

Section 2. The aforementioned amendments relating to the Bond Reserve Accounts shall become effective on the date of adoption of this Supplemental Resolution. The sums representing the Minimum Reserves required by the Prior Resolutions and the Current Resolution for the Bond Reserve Accounts shall be transferred to the Commission. Any and all amounts in the Bond Reserve Accounts in excess of the Minimum Reserve amounts shall be deposited simultaneously in the Revenue Fund.

Section 3. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 12<sup>th</sup> day of April, 2010.

MT. ZION PUBLIC SERVICE DISTRICT

By: *Shawn K. Stalder*  
Chairperson

ATTEST:

*Shirley C. Mace*  
Secretary

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of the Mt. Zion Public Service District on this 12<sup>th</sup> day of April, 2010.

Dated: April 12, 2010.

[SEAL]

*Shirley C. Mace*  
Secretary



# AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA  
COUNTY OF CALHOUN, to-wit:

I, Helen R. Morris, being first duly sworn upon my oath, do depose and say that I am publisher of *The Calhoun Chronicle/Grantsville News*, a Democratic newspaper published for at least fifty weeks during the calendar year in Grantsville, Calhoun County, West Virginia, that such newspaper is a newspaper of "general circulation" as that term is defined in Article 3, Chapter 59 of the Code of West Virginia, 1931, as amended, within the publication area, or areas, of said municipality and county and adjoining counties of Calhoun; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political nature and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of

## PUBLIC NOTICE

as duly published in said newspaper once a week for 1 successive week(s) (Class I), commencing with the issue of the 19<sup>th</sup> day of November, 2009, and ending with the issue of the 19<sup>th</sup> day of November, 2009.

The cost of publishing said annexed notice was \$ 78.09.

Signed

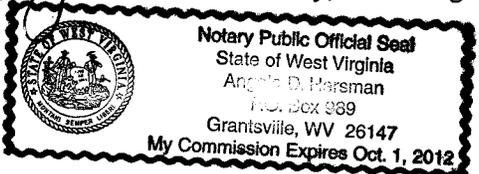
Helen R. Morris

Taken, subscribed and sworn before me in my said county

on This 10<sup>th</sup> day of November, 2009.

My commission expires: October 1, 2012

Angela D. Herma  
Notary Public of Calhoun County, West Virginia



## NOTICE TO RESIDENTS OF MT. ZION PUBLIC SERVICE DISTRICT AND OTHER PERSONS INTERESTED IN RESOLUTION FOR PROPOSED ISSUANCE OF \$600,000 WATER REVENUE BOND, SERIES 2009 A AND \$850,000 WATER REVENUE BOND, SERIES 2009 B

Pursuant to the provisions of West Virginia Code Chapter 6, Article 9A, Section 6, and in accordance with the provisions of West Virginia Code Chapter 16, Article 13A, as amended, you are hereby notified that a meeting of the Public Service Board (the "Board") of the Mt. Zion Public Service District (the "Public Service District") will be held on the 28th day of November, 2009, to consider for adoption a Resolution entitled "Resolution Authorizing the Acquisition and Construction of Public Service Properties and Issuance of Parity Water Revenue Bond, Series 2009 A, and Water Revenue Bond, Series 2009 B, in the Principal Amounts of \$600,000 and \$850,000, Respectively, to Finance the Acquisition and Construction of Improvements to a Public Water System; Defining and Prescribing the Terms and Provisions of the 2009 Bonds; Placing Limit on Sale of System; Providing Generally for the Rights and Remedies and Security of the Holder of the 2009 Bonds; Providing Statutory Lien on Revenues and System; Providing for the Adoption, Ratification, Approval and Collection of Rates and Charges for the Public Water System; and Providing General Terms and Providing When This Resolution Shall Take Effect" (the "Resolution") to authorize the issuance of Water Revenue Bond, Series 2009 A, and Water Revenue Bond Series 2009 B (collectively, the "2009 Bonds"), in the principal amounts of \$600,000 and \$850,000, respectively. The 2009 Bonds will provide a portion of the funds to finance the cost of the acquisition, construction and extension of betterments and improvements for the existing water system of the Public Service District including the construction of new lines and other improvements within the Public Service District.

The entire amount of the principal of and interest on the 2009 Bonds will be paid solely and only from the revenues received from operation of the water system of the Public Service District to be amortized over a period of 38 years. The Resolution provides provisions with respect to the final interest rate which may be but cannot exceed 4.125% per annum which may be finally determined therein or by supplemental resolution.

A copy of the Resolution and a copy of the plans and specifications of the proposed project are available for examination by any interested person at the Public Service District's office during regular office hours of such office which are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

The meeting will be held at the Arnoldsburg Community Center in Arnoldsburg, West Virginia, on the 28th day of November, 2009, at 6:00 p.m., and any person or persons interested may appear before the Board and be heard as to whether or not the Resolution shall be put into effect. All suggestions, protests and objections to the issuance of the 2009 Bonds will be heard by the Board.

Dated this 16th day of November, 2009.

MT. ZION PUBLIC SERVICE DISTRICT  
Calhoun County, West Virginia  
Sharon Postalwait, Chairperson  
Wilma Mace, Secretary  
Class I Legal - 1tc/11/19



Copy

Minutes  
Special Meeting  
Mt. Zion PSD  
November 28, 2009

Meeting was called to order by Sharon Postalwait, Chair, at 6:10 p.m.

Members present: Sharon Postalwait, Shirley Mace, Roscoe Gainer, II.

Others: See accompanying list,

Agenda items:

1. To receive the comments of the public in a public hearing in regard to the 2009 Mt. Zion Public Service District Water Extension Project:
  - a. Tom Whittier made statements: 1: The public needs and wants water, and 2: Will ask who is in favor of financing this project as described with USDA. Who lives in the boundaries of this project? Total=10. Whittier asked the crowd how many wants the water to go through = 10 hands (unanimous). Whittier then explained the financing provides \$5.2 million and the Mt. Zion PSD would have to borrow \$600,000. Grant money for \$4.6 million would cover the remainder of the project costs. He then explained the customers would end up paying 20%, 80% would be paid by others. He asked if there were any objections to this ration of grant to loan = 0 (no hands shown to object). He then asked if there were any other comments from the crowd. There were none.
2. To consider and act upon a bond resolution authorizing the financing of the 2009 Mt. Zion Public Service District Water Extension Project as described in the published notice of public hearing:
  - a. Whittier explained it is proper to ask the board, due to improper minutes of prior meeting, to approve the bond resolution. Roscoe Gainer, II, moved to approve the bond resolution as presented by bond counsel. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.
3. To receive the advice of the United States Department of Agriculture, Rural Development Office, in regard to the award of bids for the 2009 Mt. Zion PSD Water Extension Project:
  - a. Whittier reported he had received a letter from Virginia McDonald of the USDA dated November 27, 2009, in which she recommends and concurs with the PSD's recommendation and gives permission to award the bids. The USDA concurs with the recommendation to award Contract #1 to Bruce Allen and to award Contract #2 to Mid-Atlantic for \$319,600.00. A pre-construction and pre-closing conference is scheduled for December 21, 2009 and final is December 23, 2009. The letter then goes through the various steps prior to this closing.
4. To award a contract for Contract 1:
  - a. Gainer moved to award Contract #1 according to USDA recommendations. Mace 2<sup>nd</sup> the motion. Motion carried.
5. To award a contract for Contract 2:

- a. Gainer moved to award Contract #2 according to USDA recommendations. Mace 2<sup>nd</sup> the motion. Motion carried. Mr. Caswell noted that the letter from the USDA was not a recommendation. Gainer moved to award Contract #2 to Mid-Atlantic. Mace 2<sup>nd</sup> the motion. Motion carried. Call for vote, 3 for 0 against.
6. To evaluate the condition of the equipment and records received by the District from Wilma Mace and to take any action necessary to correct any deficiencies:
  - a. Shirley Mace reported Wilma had resigned and she went out to pick up some boxed items, the computer, printer, fax machine and several boxes of older paperwork. After consulting a professional computer technician, it was suggested we clone the computer and work from a copied hard drive. Norma Collins and Shirley did so and now have the computer back. On advice of Whittier, we are taking inventory of each box we have received. We have not received filing cabinets yet. We are not having any resistance by Wilma or family to cooperate with the PSD. We are finding many unopened-overdue bills. We are not ready to mail November 20 bills yet. Norma is working on setting up a training session with ASI for Sandra Ballengee, board members, and Norma as a backup. We are finding unopened unpaid bills two months old and some older. These are adding up to more that PSD has on hand. Will remedy that one step at a time.
  - b. Whittier reported there are two actions against the PSD with the Public Service Commission. First is the Calhoun County Commission, second is a case with Gary Burdick for erroneous billing.
7. To receive and act upon the resignation of Wilma Mace:
  - a. Gainer moved to accept the resignation of Wilma Mace. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.
8. To act upon the employment of a replacement for Wilma Mace:
  - a. Sandra Ballengee is a temporary volunteer along with Norma Collins to help until funds are available for a permanent hire. The permanent position will be posted. We will need to adopt a job description. The board also needs to elect a Secretary/Treasurer. This is a matter for the regular meeting.
9. To vote on any decisions made as a result of the information received in any of the above matters:
  - a. None.

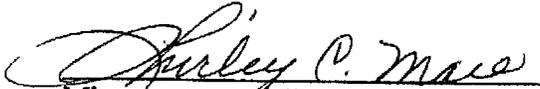
Gainer moved the meeting adjourn. Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Meeting adjourned at 6:36 p.m.

Members of the public asked to speak.

Bob Weaver asked if there was documentation on Ron Lane's letter. Whittier explained that Rodecker was the counsel on that issue and his opinion concluded that Lane's bid extension was ineffective due to stipulation in the letter for modifications of the original pricing. The

letter was furnished at the last meeting. USDA indicated concurrence with that opinion. Weaver asked if there was any documentation that MOVRC needed the process to be sped up? Whittier rendered in his opinion that both MOV and USDA were concerned about any more delays. No documentation directly to that effect. Are there copies of both opinions, yes from prior meetings? Could they have a copy? Shirley Mace replied the PSD couldn't provide those right now. Neither Ron Lane nor Bruce Caswell got copies of these letters.

Ron Lane asked board about their reluctance to make the motion and second the motion to award the job to Bruce Allen. Was there conversation that said the PSD would lose their funding if they didn't award the job right then? Gainer reported these issues were discussed in executive session. Lane asked if the board was pressured to make the decision? Chip Westfall spoke up and reported he had attended a meeting as a member of the board for the MOVDA and had asked Time Meeks about a re-bid situation. Meeks felt if the PSD re-bid there wouldn't be enough money to complete the project. Whittier heard the same concerns. He felt bids would go up. The project started at \$3.9 million and went up to \$5.2 million. A delay would increase the bids. Lane reported that prices had gone up but were now coming back down. He felt the PSD should have a new engineer and re-bid the project. Lane also stated two things: 1-the community wants the water, 2-they want the corruption stopped. Whittier responded that everyone has the best interest of the community in mind and are dedicated to getting the water. Lane reported he had been awarded the job two times. He wanted the bid extension letters to be looked at equally and fairly. The time factor was an issue. He felt it indicated unfair bidding.

  
Minutes respectfully submitted by  
Shirley Mace

  
Sharon Postalwait, Chair

Date approved: Dec. 14, 2009

Minutes  
Regular Monthly Meeting  
Mt. Zion PSD  
December 14, 2009

Called to order at 6:06 p.m. by Chair, Sharon Postalwait.

Members present: Sharon Postalwait, Shirley Mace, and Roscoe Gainer, II.

Roscoe Gainer moved to approve Minutes of November 9 regular meeting, Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

Roscoe Gainer moved to approve the minutes of the November 20 special meeting, Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

Shirley Mace moved to approve the minutes of the November 28 special meeting, Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.

Roscoe Gainer moved to approve the minutes of the December 7 special meeting, Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

Financial Report: submitted by Norma Collins.

Chair Postalwait moved to the election of officers as the first item of business. Roscoe Gainer moved Sharon Postalwait remain Chair of the Board of Directors. Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Shirley Mace moved Roscoe Gainer act as Vice-Chair, Sharon Postalwait 2<sup>nd</sup> the motion. Motion carried. Roscoe Gainer moved Shirley Mace act as Secretary/Treasurer of the Board of Directors, Sharon Postalwait 2<sup>nd</sup> the motion. Motion carried.

The board then discussed the creation of a Budget and Finance Committee. Roscoe Gainer moved to create the committee, Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Chair Postalwait appoints members to the committee. Roscoe Gainer moved to approve Shirley Mace (Board Sec./Treasurer) as the Chair. Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Chair Postalwait then appointed Norma Collins and Saundra Ballengee as volunteer committee members and Tom Whittier as a member. Roscoe Gainer moved to approve the three to be on the Budget and Finance Committee. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

**Unfinished business:**

1. Route 16 Waterline extension project reports: Roscoe Gainer moved to go into executive session to receive advice of counsel on the Rt. 16 Waterline extension project. Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Board went into executive session at 6:20 p.m.. Board returned at 7:18 p.m. No actions or decisions were made and no votes taken on items.
  - a. Pending litigation on Contract 1,
  - b. Litigation procedure on Contract 2,
  - c. Closing procedures Dec. 21, and Dec. 23,
  - d. Any updates or reports from USDA,
  - e. Any other comments.

2. Report on actions pending before Public Service Commission:
  - a. Gary Burdick Case: Both cases were given additional time to respond by the PSC. The date was extended at least 30 days. Shirley, Norma and Sandra worked with Walter Fraser from Appalachian Software, Inc. and corrected mistakes made in data entry to Gary Burdick's account. Norma will compile and get information to Tom Whittier for a response to the PSC case.
  - b. Calhoun County Commission: Shirley reported some minutes are not found yet. She, Norma, and Sandra are still looking through boxes. Have found most and if we can't find the rest we will submit all we have.
3. Report on DEP violation and fine: Tom Whittier is working on getting the monthly payment lowered. PSD will have to make payments. No response yet to the request to make \$1,000 per month payments instead of \$2,000 per month. He will forward that as soon as he receives it.
4. Authorization to prepare a written Operation and Maintenance contract for B & T Battery Doctor – Tom Fluharty and Dick Ullum, approved for contracted services August 10, 2009: Tom Whittier reported that the USDA and PSC requires contracts in writing. We are now operating under a word of mouth contract. There are acceptable contracts already in format-Whittier will modify and bring to next board meeting for approval.
5. Water and Sewer Field Reports:
  - a. Water: Dick reported he ordered water valves for Millstone tank (altitude valves). Friday the phones went out and came back on. The pump on the Gunn tank was reset to pump and pumped out 127,000 gallon water overflow. Grantsville phoned Dick and they were pumping too much and needed to check. Tom and Dick filled the tanks manually all weekend. Kevin Church came out and checked the phone line and found it working properly. We need some sort of warning system. Grantsville has a back-up system and computer calls the operator if it suspects error. Need a red light or something on the tanks. They also reported they are still digging out isolation valves. Have a report from J.D. Douglas of the WV Health Department. He listed several things needed to be repaired or upgraded. We have 20 days to respond to the report. There followed a discussion about possible funds from Homeland Security Grants. Grants are usually done through engineers (Whittier) asked Tim Meeks if USDA could assist. Tim agreed to look into sources and will call J.D. and contact them, then start the process to apply for funding.
  - b. Sewer: Need the sludge hauled and need dechlor tablets. DEP stops to inspect at random. The DEP from St Albans stopped in and looked around and noted deficits and suggested we needed a larger plant. Water is much cleaner going out.

Sharon Postalwait, Chair



Shirley Mace, Sec/Trs



A lot of water and sewer coming into the plant, 40,000 capacity is not large enough. A flow-meter is still needed. Drains on roofs are sometimes put through the system. DEP requires a plan on how to deal with this. 2010 is the deadline. Dick and Tom could use a list of sewer customers. Sludge every month is \$400-\$500. If apply for a "Land Disposal Permit" for each field. Tom can haul or could sell to farmers. Different if have to sell sludge.

6. Any other pending matters:

- a. Roscoe Gainer reported he met with engineers last week about this advertisement for the upgrades to existing structures. Gave them general information. Usually 8-10 contractors bid on each bidding. Generally they go with low bidder. Also complete projects quickly. They will again meet at noon tomorrow. Dunn engineering of Charleston gave interest. USDA says they can assist with securing funding and act as project manager. We have to straighten up our finances first before a rate increase is possible. Tim Meeks said it will take some time before we can look at a rate increase. Getting a contract for engineer to upgrade sewer system will follow a lengthy process (Wastewater System Improvements Engineering Selection Process). Meeks wants on the agenda for January.

New Business: (addressed earlier in meeting)

1. Election for board officers
  - a. Chair
  - b. Vice-Chair
  - c. Secretary/Treasurer

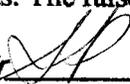
2. Creation of Budget and Finance Committee to oversee Accounts Payable, Accounts Receivable, and create a 2010 Monthly and Yearly Budget.

Bob Weaver asked if Ron Lane, Inc. had filed for an injunction. Whittier reported that not all parties have been served. No hearing is scheduled yet.

After reviewing minutes of the Dec. 7, 2009, Special Meeting, the meeting started at 5:10 p.m. and not 6:10 p.m. Roscoe Gainer moved to accept the minutes with the time change, Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

Whittier will send a draft???

Norma asked about approving Accounts Payable and transfer of monies. Again we need a rate increase to bring the monthly revenues up equal or above expenses. The PSC would do an analysis and recommend a significant increase to cover the 13 years previous with no increase. First step would be to call a CPA. Tom Whittier knows someone that worked with the PSC before and now works on his own. If PSC grants a rate increase it can be issue to customers in increments. The raise must be right at \$35/month in order to be eligible for USDA grant money.

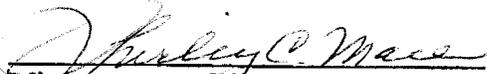
Sharon Postalwait, Chair 

Shirley Mace, Sec/Trs 

We would have to contact the Infrastructure Council. We can ask PSC to do this without charge but it can take months. Whittier will talk to Leslie Anderson about possible rate increases and how we can get them for sewer.

Roscoe Gainer moved we request special assistance from PSC with sewer and water rates. Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Whittier will check on having an executive meeting (committee) without formally meeting.

Roscoe Gainer moved to adjourn. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.  
Adjourned at 8:53 p.m.

  
Minutes respectfully submitted by  
Shirley Mace

  
Sharon Postalwait, Chair

Date approved: Jan 11 2010

Minutes  
Regular Monthly Meeting  
Mt. Zion PSD  
January 11, 2010

Called to order at 6:00 p.m. by Chair, Sharon Postalwait.

Members present: Sharon Postalwait, Shirley Mace, and Roscoe Gainer, II.

Minutes of the December 14, 2009, Regular Monthly Meeting were read by Shirley Mace. Roscoe Gainer moved to accept the minutes as read, Shirley Mace 2<sup>nd</sup> the motion. Motion carried. Shirley gave a signed copy of the minutes to Bob Weaver for County Commission. Minutes need to be given to Tom Whittier for County Commission. Fred Rader reported the County Commission is the only entity required to receive minutes. Can e-mail a copy to the USDA, that would be helpful.

Financial Report: submitted by Norma Collins. The transfer of sewer monies collected can be easily tracked by a monthly accounting summary report. The J. F. Allen bill for water line damage was mailed. No reply has been received.

**Unfinished business:**

*1. Receive report on Rt. 16 Waterline Project litigation:*

*a. Contract 1:* Tom Whittier reported that litigation is in somewhat of a discovery stage. Both plaintiffs are moving for money damages. No copies of amended complaints have been received. He reported that Rodecker intends to file a motion to dismiss as far as PSD is concerned. A hearing is scheduled for January 22 on motion by Drew Patton for Jim Hildreth for attorney fees. The junction was denied. Whittier did not feel it was wrongfully requested.

*b. Contract 2:* Whittier reports he will aggressively pursue dismissal of motions. He filed for attorney fees. If Whittier completes work soon enough, he could try to introduce a motion to dismiss on January 22. Next date for hearing is February 22. They will be presenting then. Both bids have been extended. Hildreth expects both to be extended to end of March. The USDA has everything on hold pending what happens with these motions. Whittier feels there will be a dismissal. The judge has indicated an interest in public need for water in prior hearing.

*2. Report on actions pending before Public Service Commission.*

*a. Gary Burdick Case:* A reply to the PSC has been prepared by Whittier. Norma prepared a report to Whittier and information on research of records. Wilma's letter talked about bills getting flipped over in the sorter and returned. His reply would be that we don't know what she meant by that. Also had information on Lenore Coston-Westfall. No error was found in that case, just a name change. Several late fees were applied. He also explained to the PSC about the personnel change and qualified personnel are now volunteering to manage finances and accounting.

*b. Calhoun County Commission Case:* Whittier reported that a reply had been prepared to send to the Public Service Commission with Minutes of 2007 Aug-Dec, 2008 Aug-Dec, and 2009 Jan-Dec. He indicated in his reply that all minutes were not approved except minutes of Nov. 2009.

Sharon Postalwait, Chair 

Shirley Mace, Sec/Trs 

He also had copies of the Audits of 2005 and 2006. Lisa Thornburg was contacted. She quit and terminated her relationship when she had nearly finished her reports. Whittier asked if she will complete those for payment on her bill. He has not received a response yet. Whittier asked for the board to approve the responses to the cases. Shirley Mace moved to authorize Sharon Postalwait to sign these responses to the PSC cases. Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.

Whittier also reported on the Rule 19A Request for Change of Rates. His application for the PSD indicates the District is faced with extreme conditions where large rate increases are necessary. In support he cited the payment plan to the Town of Grantsville, 3 months behind with B & T (O & M Contract), penalties with the DEP of \$1,005 per month starting April, and payables in excess of \$80,000. He also explained there are volunteer employees and had figures attached to show data and income. PSC may send back due to lack of 2008 Annual Report. Whittier thinks they will give us time to have the Annual Report finished. He asked the board to authorize Sharon to sign this application. Fred Rader commented that if there are known capitol expenditures, the PSC will allow those to be capitalized. PSC attorney Anderson has worked with Whittier before and appears to be working with the PSD to help get the system straightened out. She could be asking for "Receivership" but has not at this point. Roscoe Gainer moved to approve Sharon Postalwait to sign the Rule 19A. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

3. *Review Operations and Maintenance Contract with B & T Battery Doctor:* Whittier reported a "simple" contract does not exist as a template. He talked to Virginia McDonald of the USDA and Allen Harris, her boss, and they will forward a copy of a contract to Whittier. He will then revamp it to suit the PSD's needs.

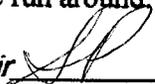
4. *Water and Sewer Field Reports:*

a. *Sewer:* Tom is home and very nauseated. He is gaining tho. Hauled one load of sludge, bill is in office. Need declor tablets. Sewer is running ok for now.

b. *Water:* Computer went out and the Gunn Tank went dry. Cindy Morgan had called and reported she had no water. Mr. Boyles looked at the situation and said something went wrong. He fixed it. The Pilot valves have been installed on Millstone Tank. Altitude valves are leaking through. Repair kits has leather packing and need those. The manual gauge is stuck. No dirt in the tank, it is clean. Should equalize the system. May have to estimate January readings due to bad weather. Leak is 9' deep and will fix as soon as weather breaks.

*New Business*

1. *Report from USDA on funds procurement for sewer treatment plant upgrades and/or existing water system upgrades and repairs:* Tim Meeks and Fred Rader reported there were 11 firms responded. Board will review those proposals and pick three to interview. Dick reported that three actually came out to inspect the plant. The engineers are only submitting qualifications at this point. Whittier asked about Homeland Security Funding. Fred Rader said he had make some phone calls to lots of different sources. He found nothing specific and no direction given and felt he was getting the run around.

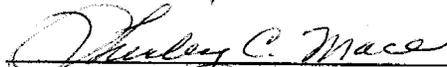
Sharon Postalwait, Chair 

Shirley Mace, Sec/Trs 

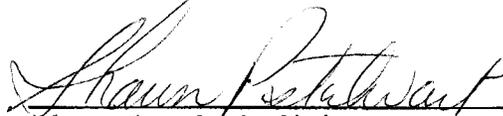
2. *Discuss contracting an accountant* Whittier reported that Michael Griffith had indicated he was interested in doing accounting work for the PSD. He is to submit a contract for approval with rates. He has worked with the PSC and most of his staff has also. Fred Rader recommends Griffith also.

3. *Any Other new business:* Lisa Thornburg will submit a list of needed information to finish the 2007 or 2008 audits. Whittier will work on this. :

Roscoe Gainer moved to adjourn. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.  
Adjourned at 8:00 p.m.



Minutes respectfully submitted by  
Shirley Mace



Sharon Postalwait, Chair

Date approved: Feb 8, 2010

Minutes  
Regular Monthly Meeting  
Mt. Zion PSD  
April 12, 2010

The regular monthly meeting of the Mt. Zion PSD was called to order by Chair, Sharon Postalwait at 6:00 p.m.

Members present: Sharon Postalwait, Shirley Mace, and Roscoe Gainer, II.

Others present included: Norma Collins, Sandra Ballengee, Tom Fluharty, Dick Ullum, Linda McCartney-Calhoun Chronicle, Harless Mace, Delbert E Lunthermin (sp?)-J.F. Allen, Co., David Hedges-Spencer Newspapers, Bob Weaver, Bob Leach-MOVRC, Jim Hildreth-Boyles & Hildreth, Glenna Fleming, Donald Little.

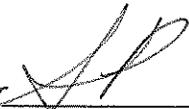
Roscoe Gainer moved to approve Minutes of March 8, 2010, regular meeting as read. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.

Financial report: Norma Collins reported the Accounts Payable are still over \$80,000 and Accounts Receivable are over \$60,000. The water we are selling is only about half of what we are buying from the Town of Grantsville. We are finding leaks and fixing leaks but the water bill isn't going down. We are going to look into other possibilities on why our numbers are consistently so high. Sandra Ballengee reported that delinquent notices went out and between \$3,500 and \$4,000 has been collected on those bills. She would like the board to set a policy on what to do about rental properties when a renter moves out of a house and there is still an outstanding balance to be paid. Is the property owner responsible? She recommends to have rental homes shut off after someone moves out and the new renter fill out and pay the deposit for service. Roscoe Gainer asked Sandra to contact other PSD's and see what their policy is for this and report in May.

Unfinished business:

1. *Route 16 Waterline extension project reports and concerns:* Jim Hildreth stressed the importance of obtaining the accountants signature on the certificate required by the USDA. He also suggested the board consider a change order to downsize in the pipe on South of Crummies Creek to Orma. He can do a change order to reduce the pipe from 10" to 8". He also reported the job will have a change in the wage rates from 2009 to 2010. We would need to make an application to the Health Department to make that change. Gainer asked if in the future more customers sign up in that area, would the 8" line carry enough water to supply them. Hildreth explained that it would and it would also assist in keeping the chlorine content fresh due to more water flow. The 8" line is satisfactory to fire department requirements also. Question asked if this would have any effect on bidder and how they purchase the pipe or pre-purchased. Hildreth said "not to my knowledge". Dick asked if there was money available to build a maintenance building somewhere up the West Fork or in Arnoldsburg area to store supplies. Hildreth said he wouldn't know until a large percent of the job is complete. Hildreth again stressed the accountant must provide the certificate. Our accountant that did the Rule 42 has resigned and Griffith hasn't been on board long enough to have information he would need. Tom Whittier will contact Griffith and ask what he would need to complete the certificate. **Roscoe Gainer moved to make the reduction in the line south of Crummies Creek from 10" to 8". Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**

Sharon Postalwait, Chair



Shirley Mace, Sec/Trs



2. Report on actions pending before Public Service Commission:

- a. *Calhoun County Commission:* Tom Whittier reported he went before the County Commission this morning to ask if they would drop the general investigation case requested by them on the PSD. The County Commission would need a letter from

the WV Public Service Commission on how they found the PSD records and what happened to the funds. He reported the Rule 19A request for interim rate increase requires the PSC to judge if PSD can pay bills only. The County Commission case looked into monies and deficits. The County Commission felt they could not get the answers they wanted if they drop the case. Whittier added he felt that neither case would give them the answers they were wanting. Either way, the project will proceed. Some discussion of a forensic audit followed with Bob Weaver, County Commissioner, stating that the County Commission would not provide funds to do this. He also suggested that if the PSD wants the case dropped they should go on record and vote not to cooperate with the County Commission and the investigation it requested. The PSD board by consensus did not change their position in that they will continue to cooperate with the County Commission and the investigation it requested. He also reported he had spoken with Leslie Anderson, attorney at the WVPSC, and was appalled to hear her suggest we just need to move ahead. He hung up on her. Whittier explained the PSC is actually doing double duty while both the County Commission case and the 19A case are being processed. By dropping the case it would eliminate this. Whittier will continue to try to get the report from PSC the County Commission is requesting. After a lengthy discussion of the investigation, **Gainer moved the original motion to support the County Commission case with the WV Public Service Commission stand. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**

- b. *Annual Reports for 2008, water and sewer separately*10-0086-psd-fc, 10-0137-pwd-fc: We will be meeting with Chuck Knurick of Michael Griffith's office. Norma is still working on getting information needed to complete these reports.

Chair, Sharon Postalwait then moved to item #5 on the agenda:

5. *J. F. Allen paving issues:* Delbert L. of the J. F. Allen paving company spoke on behalf of the J. F. Allen, Inc., concerning the bill the Mt. Zion PSD sent them for estimated 263,000 gallon water lost during work on the Mt. Zion roadway. The bill was for \$754.81. He reported they called the PSD several times trying to find the lines and they also called Miss Utility of WV. They hit the waterline and called at about 1:30 p.m. and the water wasn't shut off until 3:30 p.m. He also reported they used their equipment and helped fix the line. Dick Ullum reported they had been looking for isolation valves and some of those are being paved over. Delbert asked the PSD to reduce the bill by half. The PSD board asked if they would pay \$500. Delbert L. agreed to pay the \$500 to settle. **Shirley Mace moved to accept the \$500 as payment to settle this issue. Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.** Paving will start Wednesday unless the DOH issues a stop on work. Shirley Mace reported she had tried to get DOH here tonight and couldn't.

Sharon Postalwait, Chair 

Shirley Mace, Sec/Trs 

Chair, Sharon Postalwait then addressed item #3 on the agenda:

3. *Review a written Operation and Maintenance contract for B & T Battery Doctor:* Dick reported he got a copy of the contract but Tom did not. Tom Whittier will mail Tom Fluharty his own copy.
4. *Report on Rate Increase Application:* Whittier reported the case is continued pending work by the accountant.
6. *Water and Sewer Field Reports:* Dick and Tom reported they had found and fixed a big leak at the Calhoun County Park. They had isolated the leak to be between the two tanks. Approximately a 2" hole in the 6" line that feeds the park shelter area. The park is all shut off now. Dick also reported the Phillip's Run residents were complaining of too much water pressure. We need to replace the regulator. We're not responsible for the line from the meter into the home. **Roscoe Gainer moved we purchase the regulator. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.** Dick also reported he has a list of about 37 people to shut off due to delinquent accounts. Tom and Dick requested time to find isolation valves and mark or raise the casings. They would need about a week and would like someone to call DOH to try and get the paving stopped until they can get this work done. Dick reported he has his license to back Tom on the Sewer plant operation. His 1,000 apprentice hours on the water certification requirements were not documented and he will have to begin those again. They are going to try to get the credit for the 6 months he has been working on these hours. Tom found parts that we could use to repair part of the sewer plant in Charleston. They are used but in good shape and could buy all for \$250. **Shirley Mace moved to purchase the used equipment. Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.** Dick also reported that every time we have a heavy rain the sewer plant gets too much water. He is planning some smoke testing to find the source.
7. *Miss Utility mapping update:* none.
8. *Any other pending matters:* Glenna Fleming wanted to let the volunteers of the PSD know how much she and the community appreciate all who are working so hard.

**New Business:**

1. *Any other new business, comments:* None
2. *Calendar dates:*
  - a. *Next meeting, April 22, 2010 @ 10:00 a.m. - Pre-construction meeting*
  - b. *April 26, 2010, Project closing. (no meeting)*
  - c. *Next regular monthly meeting is May 10, 2010.*

**Move to adjourn: Roscoe Gainer moved to adjourn. Shirley Mace 2<sup>nd</sup> the motion. Motion Carried.** Meeting adjourned at 7:45 p.m.

  
Minutes respectfully submitted by  
Shirley Mace

  
Sharon Postalwait, Chair

Date approved: May 10, 2010

Minutes  
Special Meeting  
Mt. Zion PSD  
April 19, 2010

The special meeting of the Mt. Zion PSD was called to order by Chair, Sharon Postalwait at 6:30 p.m.

Members present: Sharon Postalwait, Shirley Mace, and Roscoe Gainer, II.  
Others present included: Tom Whittier-Counsel, Jim Hildreth-Boyles & Hildreth, Fred Rader-MOVRC, and Norma Collins

1. *Consider and/or act on resolution submitted by Goodwin and Goodwin, Bond Counsel for the Rt. 16 Sand Ridge Waterline extension project:* The resolution would allow the transfer of reserve funds from the bank to the Bond Counsel, Goodwin and Goodwin. This assures the lender the PSD will maintain the appropriate reserve balances on the loans. **Roscoe Gainer moved to approve the Resolution. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**
2. *Consider and/or act on resumes of Boyles and Hildreth employees as Project Representatives as submitted by Boyles and Hildreth, Inc:* Andy Collins, Matt Cox, and Kameron Hildreth were submitted by Hildreth as inspectors to monitor construction. They would act on behalf of the PSD and Boyles and Hildreth, Inc. **Shirley Mace moved to accept the recommendation to approve these employees as inspectors. Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.**
3. *Consider and/or act on automatic withdraws of USDA loan payments:* **Roscoe Gainer moved to approve if necessary. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.** Shirley Mace noted that we have a fluctuation in the time that funds come into the account and would rather not have automatic withdraws from the account so we have more control over the cash on hand and how it is used or reserved. Fred Rader explained the tap fee monies can be transferred after completion of the project to create a cushion for this situation.
4. *Consider and/or act on possible addendum to contract for legal services:* Robert Rodecker for legal services at \$175.00 per hour, limit of \$16,000. Also, Tom Whittier legal services not to exceed \$5,000. This is not for litigation representation for either contract. **Roscoe Gainer moved to approve both. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**
5. *Consider and/or act on possible addendum to contract for accounting services:* Our contract with Michael Griffith, CPA, is for completing the 2009 Annual Report. We need to ask him to also do accounting work for the project, namely sign the certificate needed on April 22, 2010, to satisfy USDA-RUS requirements. We have budgeted \$2,500 and have already spent \$4,251.00. We have some contingency money available that could be used here. The additional bill will be \$4000-\$5000. **Roscoe Gainer moved to approve the addendum and designate Tom Whittier to negotiate the limit with Michael Griffith. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**
6. *Consideration and possible action regarding Drawdown No. 3:* Jim Hildreth went over the bill for Rodecker and John Ford, surface permit from DEP, legal ads, etc. **Roscoe Gainer moved to approve payment of Drawdown #3. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.**

Sharon Postalwait, Chair



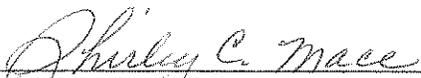
Shirley Mace, Sec/Trs

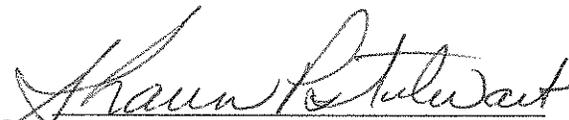


7. *Consideration and possible action regarding supplemental resolution authorizing transfer of debt service accounts to WV Municipal Bond Commission:* Done in item #1.
8. *Consideration and possible action regarding acquisition of Surety Bond concerning WV Division of Highways permit:* Jim Hildreth explained the need for the Surety Bond in the amount of \$75,000 above the current \$5,000. We may be able to do a general coverage and not have to supply a financial statement. This is not the same as a fidelity bond. The Fidelity Bond covers personnel that will be handling money. **Roscoe Gainer moved to acquire the additional \$75,000. Shirley Mace 2<sup>nd</sup> the motion. Motion carried.** Whittier said this could be paid out of project funds.
9. *Consideration and possible action regarding any other issues regarding the Rt. 16 Sand Ridge Water Project closing meetings scheduled for April 22 and April 26:* Jim Hildreth submitted a change order to Contract 1 to include the 2010 Labor and Wage Rate Schedule which would increase the bid by about \$42,000. He also submitted a change order to reduce the size of the pipe from Crummies Creek south to Orma from 10' to 8' pipe. He reported that Contract 2 wouldn't be affected as much on labor rate changes and will do the change order at no cost. **Shirley Mace moved to approve the change orders as presented. Roscoe Gainer 2<sup>nd</sup> the motion. Motion carried.** Jim Hildreth also presented a budget to date of the project fund allocations and expenses.

There was a discussion about sign-up time for new services along the new pipeline. The board felt the time would be open until the contractor can no longer install the meter at the bid price. We will have read meters and can use some of the contingency money to install new type in place of the old meters on the existing service.

**Move to adjourn:** Roscoe Gainer moved to adjourn. Shirley Mace 2<sup>nd</sup> the motion. Motion Carried. Meeting adjourned at 8:14 p.m.

  
Minutes respectfully submitted by  
Shirley Mace

  
Sharon Postalwait, Chair

Date approved: May 10, 2010



\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

GENERAL CERTIFICATE

1. TERMS
2. AWARD OF BONDS
3. NO LITIGATION
4. GOVERNMENTAL APPROVALS AND BIDDING
5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
6. SIGNATURES
7. CERTIFICATION OF COPIES OF DOCUMENTS
8. PUBLIC SERVICE COMMISSION ORDER; RATES
9. INCUMBENCY AND OFFICIAL NAME
10. DELIVERY AND PAYMENT
11. LAND AND RIGHTS OF WAY
12. MEETINGS
13. CONTRACTORS' INSURANCE
14. CONNECTIONS
15. MANAGEMENT
16. RATES AND CHARGES
17. CONFLICT OF INTEREST
18. COMPLIANCE WITH 1974, 1984 AND 1998 RESOLUTIONS AND BONDS

We, the undersigned CHAIRPERSON and the undersigned SECRETARY of the MT. ZION PUBLIC SERVICE DISTRICT, Calhoun County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Mt. Zion Public Service District, Water Revenue Bond, Series 2010 A and Revenue Bond Series 2010 B, dated April 26, 2010, in the aggregate principal amounts of \$600,000 and \$850,000, both bearing interest at the rate of 4.125%, per annum, and dated on the date hereof (collectively, the "Series 2010 Bonds"):

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as in the Bond Resolution adopted by the Public Service Board of the Issuer (the "Board") and effective on November 28, 2009, as supplemented by a Supplemental Resolution of the Board and effective on April 12, 2010 (collectively, the "Resolution").

2. AWARD OF BONDS: The entire bond issues have been duly awarded to the United States Department of Agriculture, Rural Development (the "Purchaser"), pursuant to a Letter of Conditions dated July 1, 2002, as amended by Amendment No. 1 to Letter of Conditions dated May 18, 2007, from the Purchaser and the Resolution.

3. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened restraining, enjoining or affecting the issuance and delivery of the Bonds, nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2010 Bonds, nor affecting the validity of the Series 2010 Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the Board or the title of the members and officers thereof to their respective offices; nor questioning the additions, betterments and improvements to the water system of the Issuer (the "System") being financed out of the proceeds of sale of the Series 2010 Bonds.

4. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for construction and operation of the System have been duly and timely obtained and remain in full force and effect. This includes a Certificate of Convenience and Necessity from the West Virginia Public Service Commission ("PSC") awarded in Case No. 08-1360-PWD-CN. Competitive bids for construction of the Project were solicited in accordance with West Virginia law.

5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval by the Purchaser of a loan to assist in the additions, betterments and improvements to the System. Upon issuance and delivery of the Series 2010 Bonds, the Issuer will have the Series 2010 Bonds and its Waterworks Revenue Bonds, Series B (1974), Water Revenue Bonds, Series 1984 and Water Revenue Bond, Series 1998 (collectively, the "Prior Bonds" and together with the Series 2010 Bonds, the "Bonds"), as debt outstanding, which Bonds constitute a shared, first parity lien on the Net Revenues of the System. The Issuer has obtained the consents of the holders of the Prior Bonds to the issuance of the Series 2010 Bonds.

6. SIGNATURES: The undersigned CHAIRPERSON and SECRETARY did, for the Issuer on the date hereof, officially execute and seal the Series 2010 Bonds with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and said officers are the duly elected, qualified and serving officers as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer.

7. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Orders Creating and Expanding the Issuer  
 Bond Resolution  
 Notice of Meeting to Approve Resolution  
 Minutes of Meeting Approving Resolution  
 Rules of Procedure  
 Orders Appointing Members of Public Service Board  
 Oaths of Office of Chairperson, Secretary and Members of Board  
 Rate Tariff  
 Public Service Commission Certificate of Convenience and Necessity  
 West Virginia Infrastructure and Jobs Development Council Approval Letter

8. PUBLIC SERVICE COMMISSION ORDER; RATES: The Issuer hereby covenants that it has filed information with the PSC and taken all action required to maintain the PSC Recommended Decision entered on November 21, 2008, which became final on December 11, 2008, in full force and effect. The rates were adopted by Order entered on November 21, 2008, and the Issuer has complied with all requirements of the PSC to make the rates valid and effective, and such rates are in full force and effect.

9. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "Mt. Zion Public Service District", and it is a public service district created pursuant to the Act by orders issued by The County Commission of Calhoun County, located in Calhoun County, West Virginia. The governing body of the Issuer is the Chairperson, its Board consisting of three (3) Board Members and the Secretary and Treasurer, whose names, terms and offices are as follows:

<u>Name</u>	<u>Term</u>	<u>Office</u>
Sharon C. Postalwait	December 31, 2011	Chairperson and Member
Roscoe Gainer	December 31, 2013	Vice Chair and Member
Shirley C. Mace	December 31, 2015	Secretary/Treasurer and Member

The duly appointed and acting Attorney for the Issuer is Hedges, Jones, Whittier and Hedges.

10. DELIVERY AND PAYMENT: On the date hereof, the Series 2010 Bonds were delivered to the Purchaser at Arnoldsburg, West Virginia, by the undersigned Chairperson and at the time of such delivery, the Series 2010 Bonds had been duly and fully executed and sealed on behalf of the Issuer in accordance with the Resolution.

At the time of delivery of the Series 2010 Bonds, payments of \$316,300 and \$16,700 were received by the undersigned Chairperson, being a portion of the principal amounts of the Series 2010 Bonds. Interest on advances upon the Series 2010 Bonds at the rates of 4.125% per annum is payable upon each advance from the date hereof. The Bond Proceeds have been deposited in accordance with the terms of the Resolution. The Series 2010 Bonds are dated on the date hereof, and interest on the Series 2010 Bonds at the rates of 4.125% per annum is payable on the Series 2010 Bonds from such date.

11. LAND AND RIGHTS OF WAY: All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the System have been acquired or can and will be acquired by purchase, or if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Series 2010 Bonds.

12. MEETINGS: All actions, resolutions, supplemental resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the construction, acquisition, operation and financing of the System were authorized or adopted at meetings of the Board of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Board and all applicable statutes, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings.

13. CONTRACTORS' INSURANCE: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions, as amended, and the Resolution.

14. CONNECTIONS: The Issuer has received connection agreements from at least 540 bona fide users and has deposited or will deposit forthwith the sum thereof in the 2010 Project Construction Account in full compliance with the requirements of the Purchaser.

15. MANAGEMENT: The Issuer has heretofore delivered to the Purchaser a plan concerning operation and management of the System, which plan was found to be acceptable by the Purchaser.

16. RATES AND CHARGES: Based upon information submitted by the Certified Public Accountant, the rates and charges for the System that became effective on and after the date that the project is certified as substantially complete, will, so long as the Series 2010 Bonds and all Prior Bonds are outstanding, the Series 2010 Bonds are dated on the date hereof, interest on the Series 2010 Bonds at the rates of 4.125% per annum is payable such date, provide Net Revenues sufficient to pay (a) the interest upon the Series 2010 Bonds and the Prior Bonds, (b) the principal amounts of the Series 2010 Bonds and the Prior Bonds at or before their maturity and (c) a margin of safety or reserve for the Series 2010 Bonds and the Prior Bonds and for the payment into the Reserve Accounts created for the Series 2010 Bonds and the Prior Bonds. The Issuer will approve and take the necessary steps to implement the rates approved by the Public Service Commission of West Virginia on November 21, 2008, in Case No. 08-1360-PWD-CN.

17. CONFLICT OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or with respect to a sale or lease of any land, materials, supplies or

services to the Issuer, or to any contractor supplying the Issuer, relating to the Series 2010 Bonds, the authorizing document and/or the Project, including without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than five percent (5%) of the particular business enterprise or contract.

18. COMPLIANCE WITH 1974, 1984 AND 1998 RESOLUTIONS AND BONDS: All payments have been made under the 1974, 1984 and 1998 Resolutions, and there are no defaults in the terms and conditions of the 1974, 1984 and 1998 Resolutions or the Series 2010 Bonds.

WITNESS our signatures and the official corporate seal of the MT. ZION PUBLIC SERVICE DISTRICT as of the 26<sup>th</sup> day of April, 2010.

(CORPORATE SEAL)

SIGNATURE

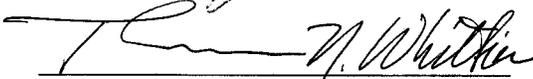
OFFICIAL TITLE



Chairperson



Secretary



Attorney for Issuer



\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A

\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

CERTIFICATE OF CONSULTING ENGINEER

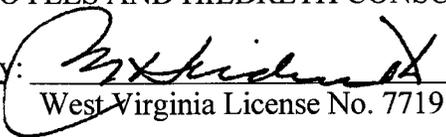
I, James B. Hildreth, P.E., of Boyles and Hildreth Consulting Engineers, Spencer, West Virginia, a Registered Professional Engineer, West Virginia License No. 7719, hereby certify that I am the engineer for the acquisition, construction and equipping of certain additions, betterments and improvements to the water system (herein called the "Project") of the Mt. Zion Public Service District (the "Issuer"), located in Calhoun County, West Virginia, a portion of which cost is being financed by the above-captioned bonds (collectively, the "Bonds") of the Issuer. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Resolution adopted by the Public Service Board of the Issuer on November 28, 2009 (the "Resolution").

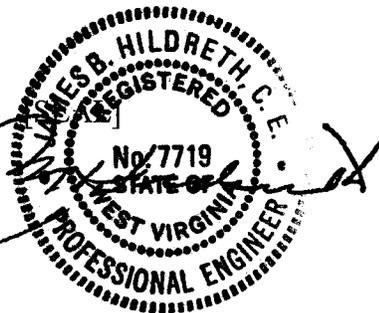
1. The Bonds are being issued for the purpose of financing a portion of the cost of the Project.

2. The undersigned hereby certifies that to the best of his knowledge after due inquiry (i) the Project will consist of the acquisition, construction and equipping of water system improvements based upon approved plans, specifications and designs which will be prepared by my firm and which have been or will be approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it will be constructed and will, with proper operation and maintenance, have an estimated useful life of at least forty (40) years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing, and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds, (iv) the chosen bidder received any and all addenda to the original bid documents, (v) the bid documents reflect the Project as approved by all required governmental agencies; (vi) the chosen bid includes every construction item necessary to complete the Project, or explains any deviation thereof, (vii) the Issuer has obtained or will obtain all permits required by the laws of the State and the federal government necessary for the construction of the Project, (viii) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are or will be sufficient, in normal instances, to pay the costs of acquisition, construction and equipping of the Project, and (ix) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature as of the 26<sup>th</sup> day of April, 2010.

BOYLES AND HILDRETH CONSULTING ENGINEERS

By:   
West Virginia License No. 7719



## Schedule A - Total Cost of Project and Source of Funds

## TOTAL COSTS OF PROJECT

Acquisition, Construction and Equipping	\$ 3,778,027
Engineering – Special Services	335,000
Inspection	195,000
Interest	80,800
Land Rights	5,000
ROW Agent	4,000
Tap Fee Assistance	2,100
Accounting	16,551
Special Counsel	16,000
Administration	35,000
Legal	20,000
Bond Counsel	22,500
Contingencies	<u>690,022</u>
	\$ 5,200,000

## SOURCES OF FUNDS

Rural Utilities Service loans in the amounts of \$600,000 and \$850,000, at the rate of 4.125% for terms not to exceed 40 years, Rural Utilities Service grants in the amounts of \$1,800,000 and \$600,000, and an Appalachian Regional Council Grant in the amount of \$1,500,000.



\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A

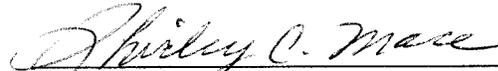
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

CERTIFICATE OF SECRETARY AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

I, Wima Mace, the duly elected Secretary of the Mt. Zion Public Service District (the "District"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the Mt. Zion Public Service District, Water Revenue Bond, Series 2010 A and Revenue Bond Series 2010 B, dated April 26, 2010, in the aggregate principal amounts of \$600,000 and \$850,000 (collectively, the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the District and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Order Creating and Expanding the District.
2. Oaths of Office of the Chairman, Secretary and Members of the Public Service Board (the "Board").
3. Bond Resolution (the "Bond Resolution") adopted on November 28, 2009.
4. Supplemental Resolution (the "Supplemental Resolution") adopted on April 12, 2010.
5. Minutes of the November 28, 2009 and April 12, 2010 meetings of the Board wherein the Bond Resolution and Supplemental Resolution were considered and approved.
6. Affidavit of publication of the abstract and notice of meeting on the Bond Resolution published in *The Calhoun Chronicle/Grantsville News*.
7. Recommended Decision of the Public Service Commission of West Virginia entered November 21, 2008, which became final on December 11, 2008, Case No. 08-1360-PWD-CN.
8. Approval Letter from the West Virginia Infrastructure and Jobs Development Council dated May 2, 2007.
9. Rate Tariff issued June 4, 2007, which became effective May 23, 2007.

WITNESS my signature and the official seal of the Mt. Zion Public Service District as of the 26<sup>th</sup> day of April, 2010.

  
Secretary

(SEAL)





April 26, 2010

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

I, Michael D. Griffith, a Certified Public Accountant, License No. WV003909, of Alum Creek, West Virginia, have reviewed the water service rates to be charged by the Mt. Zion Public Service District (the "District") that are included in a Recommended Decision of the Public Service Commission of West Virginia entered November 21, 2008, which became final on December 11, 2008, in Case No. 08-1360-PWD-CN, and which rates are effective for service rendered on or after substantial completion of the project. Based upon projected operation and maintenance expenses and anticipated customer usage, it is my opinion that the schedule of rates set forth in the Rate Tariff are adequate to pay operation and maintenance expenses of the System, as defined in the Bond Resolution, hereinafter described, to pay the principal of and interest, if any, on the 2010 Bonds and the Prior Bonds, as defined in the Bond Resolution, and to meet the one hundred fifteen percent (115%) debt service coverage requirement of the Prior Bonds and the 2010 Bonds and the Bond Resolution adopted by the Public Service Board of the District on November 28, 2009. It is my further opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the 2010 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three succeeding years after the completion of the improvements to be financed by the 2010 Bonds, will be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the 2010 Bonds and the Prior Bonds.

WITNESS my signature as of the 26<sup>th</sup> day of April, 2010.

By:



Michael D. Griffith, CPA, AFI  
CPA License No. WV003909  
Griffith & Associates, PLLC

MDG/s

Michael D. Griffith, CPA, AFI  
michaelgriffithcpa@verizon.net

950 Little Coal River Road Alum Creek, WV 25003  
Phone: (304) 756.3600 Facsimile: (304) 756.2911



April 26, 2010

PROJECT CPA - USDA CERTIFICATE

\$600,000

MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND

SERIES 2010 A

and

\$850,000

MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND

SERIES 2010 B

Mt. Zion Public Service District  
Mt. Zion, West Virginia

United States Department of Agriculture  
Parkersburg, West Virginia

Ladies and Gentlemen:

I, Michael D. Griffith, a Certified Public Accountant, License No. WV 003909, West Virginia, have reviewed the books and records of the Mt. Zion PSD. The District is required by its prior bond covenants to build and/or maintain reserve accounts up to one year debt service. I hereby certify that the District's debt service reserves are funded or being funded in accordance with these requirements. I also provide certification that the accounts and records of the District have been established in accordance with West Virginia Public Service Commission requirements and these accounts and records are now operational.

WITNESS my signature as of the 26<sup>th</sup> day of April, 2010.

By:

Michael D. Griffith, CPA, AFI  
CPA License No. WV003909  
Griffith & Associates, PLLC

80000 SERIES  
30% P.C.W.



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MT. ZION PUBLIC SERVICE DISTRICT, a public corporation

OF

MT. ZION, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING

WATER

an area located 1.5 miles south of Grantsville, Calhoun County, along WV Route 16

Filed with THE PUBLIC SERVICE COMMISSION

of

WEST VIRGINIA

---

Issued

Effective for service rendered on and after substantial completion  
or as otherwise provided herein

---

Issued by authority of an Order of the  
Public Service Commission of West Virginia  
in Case No. 08-1360-PWD-CN final  
December 11, 2009 or as otherwise provided herein.

Issued by Mt. Zion Public Service District, a public utility

By \_\_\_\_\_

MT. ZION PUBLIC SERVICE DISTRICT (Water)

Title  
P.S.C. W.VA. Tariff No. 14  
Original Sheet No. 1

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY

Available for general, domestic, commercial, industrial and sale for resale water service.

(I) RATES (customers with metered water supply)

First	2,000 gallons used per month	\$11.19 per 1,000 gallons
Next	8,000 gallons used per month	\$11.01 per 1,000 gallons
All over	10,000 gallons used per month	\$10.83 per 1,000 gallons

(I) MINIMUM CHARGE

No monthly bill will be rendered for less than \$22.38 per month.

5/8 inch meter	\$ 22.38 per month
3/4 inch meter	\$ 33.57 per month
1 inch meter	\$ 55.95 per month
1 - 1/2 inch meter	\$ 111.90 per month
2 inch meter	\$ 179.04 per month
3 inch meter	\$ 358.08 per month
4 inch meter	\$ 559.50 per month
6 inch meter	\$1,119.00 per month
8 inch meter	\$1,790.40 per month

The above minimum charges are subject to an additional \$0.40 (forty cents) per thousand gallons used per month.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RECONNECTION

\$20.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

(I) Indicates increase

TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

- (N) A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$250.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap service.

- (C) LEAK ADJUSTMENT

\$3.93 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

- (C) RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

- (N) SECURITY DEPOSIT

A deposit of \$50.00, or 2/12<sup>th</sup> of the average annual usage of applicant's specific customer class, whichever is greater.

- (N) Indicates new

(C) Indicates change in text

**Bill Bragg**

---

**From:** Young, Vickie [vpriddy@psc.state.wv.us]  
**Sent:** Friday, July 17, 2009 4:14 PM  
**To:** Bill Bragg  
**Subject:** RE: Mt. Zion PSD Water  
**Attachments:** Mt.\_Zion\_#14w\_(pending\_construction).doc; 08-1360-PWD-CN.pdf

Bill,

Tariff No. 13 is the current tariff for Mt. Zion but we also have a Tariff No. 14 which will be effective upon substantial completion of a project in the above case.

---

**From:** Bill Bragg [mailto:wkb@goodwingoodwin.com]  
**Sent:** Friday, July 17, 2009 3:57 PM  
**To:** Young, Vickie  
**Subject:** Mt. Zion PSD Water

Vickie,

Do you have a tariff on file for Mt. Zion PSD that is more current than No. 13, issued 6/4/07?

Thanks.

Bill Bragg

---

Goodwin & Goodwin, LLP

300 Summers Street, Suite 1500

Charleston, WV 25301

(304) 346-7000

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PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: November 21, 2008

CASE NO. 08-1360-PWD-CN

MT. ZION PUBLIC SERVICE DISTRICT,  
a public utility, Valley Fork, Clay County.

Application for a certificate of convenience and necessity to construct water distribution system improvements consisting of approximately 24,000 linear feet of 10-inch water line, 45,000 linear feet of 8-inch water line, 38,000 linear feet of 6-inch water line, 2,300 linear feet of 2-inch water line, two pressure reducing stations, one booster station, one nominal 115,000-gallon water storage tank, telemetry equipment and miscellaneous appurtenances.

**FINAL**

12/11/2008

RECOMMENDED DECISION

On August 11, 2008, Mt. Zion Public Service District (District) filed an application, duly verified, for a certificate of convenience and necessity to construct certain additions and improvements to the District's water distribution system in Calhoun County. The project consists of approximately 24,000 linear feet of 10-inch water line, 45,000 linear feet of 8-inch water line, 38,000 linear feet of 6-inch water line, 2,300 linear feet of 2-inch water line, two pressure reducing stations, one nominal 115,000-gallon storage tank, telemetry equipment and miscellaneous appurtenances. The District proposed a 37% increase in its rates to generate sufficient revenues to cover the increased debt service and operation and maintenance (O&M) expenses associated with the project.

The estimated cost of the proposed project is approximately \$5,200,000, to be funded by Rural Utilities Service (RUS) Loans in the amounts of \$600,000 and \$850,000, both for terms of 40 years at 4.125% interest, RUS grants in the amounts of \$1,800,000 and \$450,000 and an Appalachian Regional Commission (ARC) grant in the amount of \$1,500,000. Commitment letters for the RUS funding were included with the application.

By Commission Order dated August 11, 2008, the Applicant was directed to give notice of the filing of its application by publishing a copy of the Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Calhoun County, making due return to the Commission of proper certification of publication immediately upon publication. Said Order also provided that anyone desiring to protest or intervene should file a written protest and intervention within thirty days following the date of publication.

By Commission Order dated August 20, 2008, this matter was referred to the Division of Administrative Law Judges with a decision due date of on or before December 29, 2008, if there has been no public protest to the application within thirty (30) days after the required notice has been provided. If a public protest was received within thirty (30) days after the required notice had been provided, the Division of Administrative Law Judges was to render its decision on or before April 2, 2009.

On September 2, 2008, the District submitted its letter of approval of funding from the ARC.

On September 5, 2008, the District filed an Affidavit of Publication reflecting that, on August 21, 2008, the Notice of Filing was published in The Calhoun Chronicle/Grantsville News, a newspaper duly qualified by the Secretary of State, published and of general circulation in Calhoun County. As of the date of this Order, no protests or requests to intervene have been filed.

On September 8, 2008, Staff Attorney Leslie J. Anderson filed an Initial Joint Staff Memorandum to which was attached the Initial Internal Memorandum prepared by Jonathan Fowler, P.E., Engineer II, Engineering Division, and Michael Quinlan, Utilities Analyst I, Water and Wastewater Division. This application is for a certificate of convenience and necessity to construct certain additions, extensions and improvements to the District's water distribution system in Calhoun County, West Virginia. The District currently serves approximately 406 customers and is proposing to extend its existing water distribution system to serve approximately 150 new customers in the areas of Sand Ridge, Russett, along WV Route 16 and along the waters of the West Fork of the Little Kanawha River.

The project is estimated to cost approximately \$5,200,000. The project has been approved by the West Virginia Infrastructure and Jobs Development Council (WVIJDC) and is proposed to be funded through a \$1,500,000 ARC grant, RUS loans in the amount of \$600,000 and \$850,000 and RUS grants in the amount of \$1,800,000 and \$450,000. All of the required information had been submitted with the application. Staff would continue to review the filing and issue its final recommendation in accordance with the Commission's required time frame. At a project cost of \$5,200,000 and given that the proposed customer density is 9.02 customers per mile of pipe, the average cost per customer was \$14,166.67.

On November 7, 2008, Staff Attorney Anderson filed the Final Joint Staff Memorandum to which was attached the Final Internal Memorandum prepared by Mr. Fowler and Mr. Quinlan. The proposed project will require that the treatment plant at Grantsville supply an additional estimated average daily consumption of just over 25,800 gallons, including a 15% loss. Based upon Staff's knowledge of this treatment plant and its current daily production, Staff opined that such additional production may easily be accommodated and it concurred with the District that using the existing plant at Grantsville as the water source represents the most practical and cost-efficient means of supplying water to the proposed extension.

The residents in the area commonly experience water quality and quantity problems. They rely on individual wells and cisterns. Complaints have included high levels of iron and other undesirable minerals that corrode pipes and fixtures; stained clothes; a strong sulfur odor; and "bad" tastes. Many residents in the area utilize expensive and unreliable home treatment units in an effort to improve the quality of water; however, the effectiveness of these units is often marginal at best. Many residents of the project area have also reported that their wells go dry at certain times of the year. Staff, therefore, supports the proposed project as being in the public interest. The project is necessary to enhance the public safety (by providing water for fire protection) and will positively impact the long-term economic viability of the area by providing an opportunity for commercial and business growth. The proposed project will involve the construction of approximately 20.65 miles of new waterlines of various sizes, one new storage tank and one new water booster station and necessary appurtenances.

The calculated customer density per mile of new main is 7.2 customers per mile, which normally is considered to be marginally low, and the estimated construction cost per new customer is estimated to be \$29,313 per customer, which is somewhat high, but not necessarily excessive in today's construction market. Staff noted that the financing includes a total of \$3,750,000 in grants, or 72.1% of the estimated project cost. Loan funds, on a unit-cost-per-customer basis, amount to just \$9,667 per customer, which Staff opines is quite favorable. This favorable grant/loan ratio should be taken into consideration when evaluating the feasibility of the project. The various engineering fees and associated technical services amount to \$530,000 or approximately 10% of the total project cost, which Engineering Staff opines is customary for projects of this scope and level of complexity.

The project has been reviewed by the West Virginia Bureau for Public Health and the necessary "Permit to Construct" (No. 18,007 dated June 16, 2008) has been issued by that agency. The West Virginia Division of Highways has been advised of this project and a draft permit has been prepared for the necessary construction activities and encroachment on State-controlled rights-of-way. All the necessary permits and regulatory approvals needed for this project have either been issued or will be available prior to the start of actual construction.

The estimate of O&M expenses as supplied by the District and its consulting engineer, as reflected in its Rule 42 exhibit, shows an increase in O&M expenses due to the proposed project of approximately \$40,600. Based upon Staff's review of this data and its review of similar utilities, Engineering Staff concurred that the estimated increased level of O&M expenses represents a reasonable, and not excessive, estimate of such costs.

The project funding consists of an ARC grant of \$1,500,000, an initial RUS loan of \$600,000 at 4.125% interest for 40 years, a subsequent RUS loan in the amount of \$850,000 at 4.125% interest for 40 years, an initial RUS grant in the amount of \$1,800,000 and a subsequent RUS grant of \$450,000. The loans will require a combined annual debt

service payment of \$77,424 and a debt service reserve of 10% of the annual debt payment, which is \$7,742. Letters of commitment for the RUS loans and grants dated May 18, 2007, were submitted with the application.

The District's current rates were established in Case No. 06-1764-PWD-30B and became effective for service rendered on and after May 23, 2007. The proposed rates are sufficient, based on the information provided, to cover the increased costs associated with the project. Staff made some changes to the recommended tariff.

The District has substantially complied with the notice provisions of West Virginia Code §24-2-11 and Rule 10.3.d. of the Commission's Rules of Practice and Procedure.

Based upon its review of the District's certificate application, supporting data and documents submitted therewith, Staff recommended that:

- (1) the District be granted a certificate;
- (2) The project financing be approved;
- (3) the Staff-recommended tariff rates and charges be approved which include, in addition to the District's proposed project-related rate increase, an increase in the 3-inch meter charge; a language change in the tap fee; and the addition of a security deposit;
- (4) if there are any changes in the plans or scope of the project, the District seek Commission approval of such changes;
- (5) if there are changes in the rates to be charged associated with the project, the District also seek Commission approval of such changes;
- (6) if there are changes in the project cost or financing which do not affect rates, the District file an affidavit executed by its CPA verifying that its rates and charges are not affected by the changes;
- (7) the District provide a copy of the engineer's certified bid tabulation within ten days of the bid opening date for each construction contract or vendor bid contract to be awarded for this project;
- (8) the District submit a copy of the Certificate of Substantial Completion issued for each construction contract associated with the project as soon as each becomes available; and
- (9) notice be given of the change in language of the tap fee and the addition of a security deposit to the District's tariff.

Staff recommended that the District be given ten days to file a response to Staff's recommendations.

By letter dated November 7, 2008, a copy of the Final Joint Staff Memorandum was sent to the District, advising it of its right to respond within ten days. Additionally, the letter reminded the District that failure to respond to Staff's recommendations could result in a decision in the case based on the documents in the case file without further hearing or notice. No response was received from the District within the ten-day response period, or as of the date of this Order. Therefore, it will be assumed that Mt. Zion Public Service District accepts the Staff recommendations in this case.

#### DISCUSSION

The need for the proposed project is evident given that residents in the area commonly experience water quality and quantity problems, including high concentrations of iron and other undesirable minerals which corrode pipes and fixtures; stained clothing; and a strong sulfur odor. Also, the project is necessary to enhance the public safety by providing water for fire protection and it will positively impact the long-term economic viability of the area by providing an opportunity for commercial and business growth. The project has been approved by the WVIJDC.

The project will add an additional 150 new customers to the District. The residents in this area will benefit from the project since it will alleviate existing health and safety concerns due to substandard water service. The District already has obtained user's agreements from 80% of the new customers.

Based upon a review of the District's application, as well as Staff's recommendations, it is clear that the proposed project is financially feasible and that the financing of the proposed project should be approved, since all funding commitment letters have been filed.

Accordingly, the certificate application will be granted, along with the financing for the project. The Staff-recommended rates will provide a reasonable cash flow surplus, after O&M expenses and debt service requirements, and, since there have been no protests filed to this application and rate increase, they also will be approved. There is no need for the District to publish notice of the Staff-recommended tariff changes. The change in the 3-inch meter charge is not significant and is covered by the language in the Notice of Filing that the proposed rates may be increased or decreased by the Public Service Commission. The language change regarding the tap fee merely incorporates a pre-construction tap fee which is lower than, and incorporated in, the post-construction tap fee which is already included in the District's tariff. Further, the \$100 pre-construction tap fee was published in the Notice of Filing. The absence of specific verbiage is irrelevant. Finally, the security deposit is already authorized in Rule 4.2.a.2. of the Commission's Water Rules, and is authorized by statute. For years, the Commission allowed security deposits to be collected without including them in utility tariffs. The fact that now the Commission prefers that

they be listed in the tariff does not mean that they must be published.

#### FINDINGS OF FACT

1. Mt. Zion Public Service District filed an application, duly verified, for a certificate of convenience and necessity to construct certain additions and improvements to its water distribution system in Calhoun County, West Virginia. The District proposed a 37% increase in its rates to generate sufficient revenues to cover the increased debt service and O&M expenses associated with the project. (See application filed August 11, 2008)

2. The estimated cost of the project, \$5,200,000, is to be financed by a \$1,500,000 ARC grant; an initial RUS loan in the amount of \$600,000, at 4.125% interest per annum for 40 years; a further RUS loan in the amount of \$850,000, at 4.125% interest per annum for 40 years; an initial RUS grant in the amount of \$1,800,000; and a subsequent RUS grant of \$450,000. Commitment letters for all of the funding sources have been filed. (See, application filed August 11, 2008; ARC letter filed September 2, 2008; Final Joint Staff Memorandum and attachments filed November 7, 2008).

3. The District gave notice of the filing of its certificate application in accordance with the Commission's requirements by publishing a Notice of Filing on August 21, 2008 in The Chronicle/Grantsville News, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Calhoun County. No protests have been filed. (See, affidavit filed September 4, 2008).

4. The District's proposed 37% increase in rates will increase annual revenues to \$128,705. The District estimates that its annual O&M expenses will increase \$40,600, while total debt service and reserve requirements are projected to increase by \$85,166 per year as a result of this project. The remaining cash flow surplus is projected to increase \$2,939 and result in a pro forma cash flow surplus of \$35,616 and a debt service coverage of 135.386%. (See, Final Joint Staff Memorandum filed November 7, 2008).

5. The residents of the area to be served currently have an unsatisfactory water supply from individual wells and cisterns, including high concentrations of iron and other undesirable chemicals; stained clothing; a strong sulfur odor; and a bad taste. Also, many of the wells go dry at certain times of the year. (See, Final Joint Staff Memorandum filed November 7, 2008).

6. Commission Staff recommended that the project and its funding be approved. (See, Final Joint Staff Memorandum filed November 7, 2008).

#### CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to Mt. Zion Public Service District to provide safe, reliable and potable water service to the District's current customers and to serve approximately 150 new customers

in the areas of Sand Ridge, Russett, along West Virginia Route 16 and along the waters of the West Fork and Little Kanawha Rivers.

2. It is reasonable to approve the financing of the project, which consists of a \$1,500,000 ARC grant; an initial RUS loan in the amount of \$600,000, at 4.125% interest per annum for 40 years; a further RUS loan in the amount of \$850,000, at 4.125% interest per annum for 40 years; an initial RUS grant in the amount of \$1,800,000; and a subsequent RUS grant of \$450,000.

3. It is reasonable to approve the District's proposed rates and charges, as amended by Staff and as are more particularly set forth in Appendix A, attached hereto to become effective for all services rendered by the District on and after the date that the subject project is certified as substantially complete.

ORDER

IT IS, THEREFORE, ORDERED that the application for a certificate of convenience and necessity filed herein on August 11, 2008, by Mt. Zion Public Service District to construct an extension of its existing water distribution system to serve approximately 150 new customers in the areas of Sand Ridge, Russett, along West Virginia Route 16 and along the waters of the West Fork and the Little Kanawha Rivers, Calhoun County, West Virginia, be, and it hereby is, granted, without need for a formal hearing.

IT IS FURTHER ORDERED that financing of the project, consisting of an Appalachian Regional Commission grant in the amount of \$1,500,000; an initial Rural Utilities Service loan in the amount of \$600,000, at 4.125% interest for 40 years; a subsequent RUS loan in the amount of \$850,000, at 4.125% interest for 40 years; an initial RUS grant in the amount of \$1,800,000; and a subsequent RUS grant of \$450,000, be, and hereby is, approved.

IT IS FURTHER ORDERED that Mt. Zion Public Service District's proposed rates and charges, as revised by Commission Staff and attached hereto as Appendix A, be, and they hereby are, approved to become effective for all service rendered by the District on and after the date that the project is certified as substantially complete.

IT IS FURTHER ORDERED that Mt. Zion Public Service District file an original and at least five (5) copies of a revised tariff setting forth the rates and charges approved herein, within thirty (30) days from the date that the project is certified as complete.

IT IS FURTHER ORDERED that Mt. Zion Public Service District submit a certificate of substantial completion for the project from the engineer, as soon as it becomes available.

IT IS FURTHER ORDERED that Mt. Zion Public Service District file a copy of the engineer's certified tabulation of bids for all contracts to be awarded for this project within ten days of the bid opening date.

IT IS FURTHER ORDERED that, if there are any changes in the plans, financing or scope of the project or if a change in project cost affects rates, Mt. Zion Public Service District obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are any changes in project costs that do not affect rates, Mt. Zion Public Service District file herein an affidavit executed by its certified public accountant verifying that the District's rates and charges are not affected.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, Mt. Zion Public Service District comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Robert W. Glass  
Administrative Law Judge

RWG:mal:cdk  
081360a.wpd

MT. ZION PUBLIC SERVICE DISTRICT  
CASE NO. 08-1360-PWD-CN

APPROVED RATES

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale water service.

RATE (customers with metered water supply)

First	2,000 gallons used per month	\$11.19 per 1,000 gallons
Next	8,000 gallons used per month	\$11.01 per 1,000 gallons
All Over	10,000 gallons used per month	\$10.83 per 1,000 gallons

MINIMUM CHARGE

No minimum bill will be rendered for less than \$22.38 per month.

5/8-inch meter	\$ 22.38 per month
3/4-inch meter	\$ 33.57 per month
1-inch meter	\$ 55.95 per month
1-1/2-inch meter	\$ 111.90 per month
2-inch meter	\$ 179.04 per month
3-inch meter	\$ 358.08 per month
4-inch meter	\$ 559.50 per month
6-inch meter	\$ 1,119.00 per month
8-inch meter	\$ 1,790.40 per month

The above minimum charges are subject to an additional \$0.40 (forty cents) per thousand gallons of water used per month.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RECONNECTION ----- \$20.00

To be charged whenever the supply of water is turned off for violations of rules, nonpayment of bills or fraudulent use of water.

TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$250.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

LEAK ADJUSTMENT

\$3.93 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

SECURITY DEPOSIT

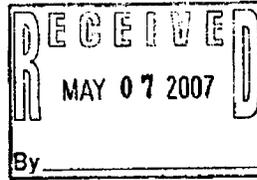
A deposit of \$50.00, or 2/12th of the average annual usage of applicant's specific customer class, whichever is greater.



# West Virginia Infrastructure & Jobs Development Council

Le-804

Public Members:  
Kenneth Lowe, Jr.  
Shepherdstown  
Dwight Calhoun  
Petersburg  
Dave McComas  
Prichard



300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Jefferson E. Brady, PE  
Executive Director

Jefferson.Brady@verizon.net

May 2, 2007

Sharon Postalwait, Chairperson  
Mount Zion Public Service District  
P.O. Box 122  
Grantsville, West Virginia 26147

Re: Mount Zion Public Service District  
Water Project 2001W-607

Dear Ms. Postalwait:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Mount Zion Public Service District's (the "District") revised preliminary application to construct waterline, storage tanks, a booster station, pressure reducing stations and necessary appurtenances (the "Project").

Based on the findings of the Water Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Water Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the revised preliminary application, the Council determined that the District should utilize a \$600,000 Rural Utilities Service loan, a \$1,800,000 Rural Utilities Service grant, a \$1,500,000 Appalachian Regional Commission grant, pursue an additional \$850,000 Rural Utilities Service loan and an additional \$450,000 Rural Utilities Service grant to fund this \$5,200,000 project. Please contact the Rural Utilities Service office at (304) 420-6666 for specific information on the steps the District needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from this agency.**

If you have any questions regarding this matter, please contact Jeff Brady at 558-4607.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Lowe, Jr." with a stylized flourish at the end.

Kenneth Lowe, Jr.

Enclosure

cc: Bob DeCrease, BPH (w/o enclosure)  
Debbie Legg, WVDO (w/o enclosure)  
Virginia McDonald, RUS  
Region V Planning & Development Council  
J. B. Hildreth, Boyles & Hildreth





United States Department of Agriculture  
Rural Development  
West Virginia State Office

\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

RUS CONSENT TO ISSUANCE OF PARITY BONDS AND PARITY LIEN

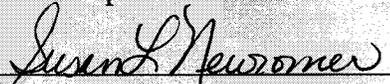
United States of America, Rural Development (the "Government"), represents that it is the sole and only registered owner of the bonds dated January 10, 1974, February 2, 1984, and May 20, 1998, in the amounts of \$40,000, \$161,000, and \$40,000, respectively, authorized by resolutions dated January 10, 1974, February 2, 1984, and May 19, 1998, respectively (collectively, the "Prior Bonds").

The Government does hereby consent to the issuance by the Mt. Zion Public Service District, Grantsville, West Virginia (the "Issuer"), of parity water revenue bonds, Series 2010 A and Series 2010 B, in the amounts of \$600,000 and \$850,000 (the "Series 2010 Bonds") as described above, to be sold to the Government. The Government hereby further consents that the Series 2010 Bonds may be payable from the revenues of the water system of the Issuer and otherwise secured on parity with the Prior Bonds.

By the execution of this consent, the undersigned hereby certifies that he/she is fully empowered and authorized to execute this consent on behalf of the Government.

WITNESS my signature as of the 22<sup>nd</sup> day of April, 2010.

UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Development

By:   
Acting State Director

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505  
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).





United States  
Department of  
Agriculture

Rural  
Development

Federal Building  
75 High Street, Room 320  
Morgantown, WV 26505-7500  
Phone (304) 284-4888  
FAX (304) 284-4892  
TTY/TDD (304) 284-4836

July 1, 2002

Sharon Postalwait, Chairperson  
Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

Dear Ms. Postalwait:

This letter, with Attachments 1 through 14 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$600,000, an RUS grant in the amount of \$1,800,000, and other funding in the amount of \$1,500,000, for a total project cost of \$3,900,000. The other funding is planned in the form of a grant from the HUD – Small Cities Block Grant Program.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist for Mt. Zion PSD  
(All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel  
Copies)

- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)  
Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"  
Attachment No. 8 - Government Auditing Standards (Revision 1994) (Accountant Copy)  
Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"  
Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"  
Attachment No. 11 - Water Users Agreement (Applicant and Attorney Copies)  
Attachment No. 12 - Declination Statement (Applicant and Attorney Copies)  
Attachment No. 13 - Sample Credit Agreement (Applicant Copy)  
Attachment No. 14 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.50% interest rate and a monthly amortization factor of .00459, which provides for a monthly payment of \$2,754. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of equal priority with the District's existing bonds, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-12 and RUS Bulletin 1780-27 which are mentioned later.

3. Users - This conditional commitment is based upon you providing evidence that you will have at least 561 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 183 signed user agreements and a certification from you that identifies and attests to the number of users actually connected to and using the District's existing water system, which is to be partially replaced by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement (RUS Bulletin 1780-9) will be used. Each user signing an agreement must make a user contribution of \$100. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a "Service Declination Statement." A guide "Service Declination Statement" is attached for your use. If a potential user refuses to sign either a user agreement or a declination statement, the individual making the contact for the District should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service. Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed user agreements, (3) signed service declination statements, (4) records evidencing user contributions having been paid, (5) a map locating each potential user's property in the new service area identifying it by number, (6) a list of all signed bona fide users numbered so as to be a cross-reference with the map, and (7) a list of all declination statements numbered so as to be a cross-reference with the map.

4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. 1910-1-FA, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

Prior to loan and grant closing, you must provide RUS with documentation that the West Virginia Public Service Commission has reviewed and approved the engineering agreement.

6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, “Legal Services Agreement” is enclosed for your use.
7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
  - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
  - b. Prior to the advertisement of bids, your accountant must certify that the accounts and records as required by your bond resolution have been established and are operational.

The Accountant’s Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3 ) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your District. The attached booklets, “Government Auditing Standards (Revised 1994)” (Attachment No. 8 ), and RUS Bulletins 1780-30 1780-31 (Attachment Nos. 9 and 10 ) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$300,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
  - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

- b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the District already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
  - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions.
  - e. On the day of loan closing, the District's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the District has already acquired real property(s) (land or facilities), the District's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
  - State Department of Health
  - Department of Environmental Protection
  - Public Land Corporation
10. Public Service Commission Approvals - You must obtain the following from the Public Service Commission of West Virginia:
- a. A Certificate of Convenience and Necessity.
  - b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
  - c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.

11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
  - a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
  - b. Workers' Compensation - In accordance with appropriate State laws.
  - c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RUS will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).
  - d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
    - (1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
    - (2) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.
  - e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

a. The contract documents should consist of the following:

(1) EJCDC Document No. 1910-8-A-1-FA, 1997 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. 1910-8-FA, "Standard General Conditions of the Construction Contract – Funding Agency Edition" and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.

(2) "RUS Supplemental General Conditions."

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance," is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

b. The contract documents must provide, as a minimum, the following insurance:

(1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the District and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.

(2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.

(3) Workers' Compensation - In accordance with applicable State laws.

c. The contract documents and final plans and specifications must be submitted to RUS for approval.

d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No.13).

14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your District, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Public Bodies – Interest earned on grant funds in excess of \$100 per year will be submitted to RUS at least quarterly as required in 7 CFR 3016.

The District must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. Water Purchase Contract - You propose to purchase treated water from the Town of Grantsville; therefore, you must enter into a Water Purchase Contract. Form RD 442-30 must be used unless you receive an exception from RUS.
16. Other Grants - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the “other” grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating the funds are available for expenditure.
17. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form RD 442-7 - “Operating Budget”

Form RD 1940-1 - “Request for Obligation of Funds”

RUS Bulletin 1780-12 - “Water or Waste System Grant Agreement”

RUS Bulletin 1780-27 - “Loan Resolution (Public Bodies)”

Form RD 400-1 - “Equal Opportunity Agreement”

Form RD 400-4 - “Assurance Agreement”

Form AD 1047 - “Certification Regarding Debarment - Primary”

Form AD 1049 - “Certification Regarding Drug-Free Workplace”

Form RD 1910-11 - “Applicant Certification, Federal Collection Policies”

FmHA Instruction 1940-Q, Exhibit A-1, “Certification for Contracts, Grants and Loans”

Certification of Compliance

Form RD 1942-46, “Letter of Intent to Meet Conditions”

18. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the

USDA - Rural Development State Office with a request for loan closing instructions to be issued.

19. Upon receipt of the loan and grant docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed.

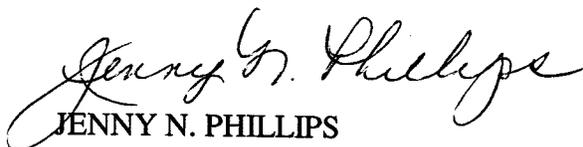
When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, that part would be RUS loan funds.

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely yours,

  
JENNY N. PHILLIPS  
State Director

Enclosures

cc: Rural Development Specialist  
Parkersburg, WV

Boyles & Hildreth, Consulting Engineers  
Spencer, WV

(Accountant)

(Bond Counsel)

(Attorney)

PROJECT CONSTRUCTION BUDGET

<u>PROJECT COST</u>	<u>SCBG</u>	<u>RUS Grant</u>	<u>RUS Loan</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 1,475,000	\$ 1,172,300	\$ 352,700	\$ 3,000,000
CONST. CONTINGENCY		\$ 115,300	\$ 34,700	\$ 150,000
LAND & RIGHTS		\$ 5,700	\$ 1,800	\$ 7,500
LEGAL FEES		\$ 5,700	\$ 1,800	\$ 7,500
BOND COUNSEL		\$ 7,700	\$ 2,300	\$ 10,000
ACCOUNTING		\$ 1,900	\$ 600	\$ 2,500
ENGINEERING FEES		\$ 313,600	\$ 94,400	\$ 408,000
Basic -				
Insp. -				
Special -				
INTEREST			\$ 54,000	\$ 54,000
ADMINISTRATION	\$ 25,000			\$ 25,000
EQUIPMENT		\$ 29,500	\$ 8,500	\$ 38,000
BUILDING		\$ 115,300	\$ 34,700	\$ 150,000
PROJECT CONTG.		\$ 33,000	\$ 14,500	\$ 47,500
<b>TOTAL</b>	<b>\$ 1,500,000</b>	<b>\$ 1,800,000</b>	<b>\$ 600,000</b>	<b>\$ 3,900,000</b>

Rates

Available for general domestic, commercial, and industrial service.

First	2,000	gals.	@ \$6.47 per M gals.
Next	8,000	gals.	@ \$6.36 per M gals.
Over	10,000	gals.	@ \$6.25 per M gals.

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

5/8" x 3/4" meter	\$ 12.94	per month
3/4" meter	\$ 19.41	per month
1" meter	\$ 32.35	per month
1 1/2" meter	\$ 64.70	per month
2" meter	\$ 103.52	per month
3" meter	\$ 194.10	per month
4" meter	\$ 323.50	per month
6" meter	\$ 645.50	per month
8" meter	\$ 1,035.20	per month

Minimum Monthly Bill - \$12.94 for 2,000 gallons.

Attachment No. 1 to Letter of Conditions  
 For: Mt. Zion Public Service District  
 Date:

MT. ZION PUBLIC SERVICE DISTRICT  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 2,000	Next 8,000	Over 10,000	TOTAL REVENUE
0 - 2,000	141	144.98	141				
2,001 - 10,000	217	986.5		434	552.5		
All over 10,000	20	676.42		40	160	476.42	
<b>Monthly Total</b>	<b>378</b>	<b>1807.9</b>	<b>141</b>	<b>474</b>	<b>712.5</b>	<b>476.42</b>	
<b>Proposed Rates</b>			\$ 12.94	\$ 6.47	\$ 6.36	\$ 6.25	
<b>Monthly Revenues</b>			\$ 1,824.54	\$ 3,066.78	\$ 4,531.50	\$ 2,977.63	\$ 12,400.45
<b>Annual Revenues</b>			\$ 21,894.48	\$ 36,801.36	\$ 54,378.00	\$ 35,731.50	\$ 148,805.34

MT. ZION PUBLIC SERVICE DISTRICT  
USE AND INCOME ANALYSIS  
EXTENSION AREA

Blocking	Cust.	Gal/ Mo.	Minimum Bills	FIRST 2,000	NEXT 8,000	OVER 10,000	TOTAL REVENUE
0 -2,000	63	68.3	63				
2,001 - 10,000	114	513.57		228	285.57		
All over 10,000	6	98.91		12	48	38.91	
<b>Monthly Total</b>	<b>183</b>	<b>680.78</b>	<b>63</b>	<b>240</b>	<b>333.57</b>	<b>38.91</b>	
<b>Proposed Rates</b>			<b>\$ 12.94</b>	<b>\$ 6.47</b>	<b>\$ 6.36</b>	<b>\$ 6.25</b>	
<b>Monthly Revenues</b>			<b>\$ 815.22</b>	<b>\$ 1,552.80</b>	<b>\$ 2,121.51</b>	<b>\$ 243.19</b>	<b>\$ 4,732.71</b>
<b>Annual Revenues</b>			<b>\$ 9,782.64</b>	<b>\$ 18,633.60</b>	<b>\$ 25,458.06</b>	<b>\$ 2,918.25</b>	<b>\$ 56,792.55</b>

MT. ZION PUBLIC SERVICE DISTRICT  
OPERATING BUDGET

OPERATING INCOME

Metered Sales

Penalties

Other Income

Reconnect Fees

TOTAL OPERATING INCOME

\$ 205,598

NON OPERATING INCOME

Interest income

TOTAL NON OPERATING INCOME

\$ -

TOTAL INCOME

\$ 205,598

EXPENSES

O & M

\$ 142,588

Taxes

\$ 3,945

TOTAL EXPENSES

\$ 146,533

INCOME AVAILABLE FOR D/S (A)

\$ 59,065

DEBT SERVICE

Existing Bond P & I (B)

\$ 18,339

Proposed Bond P & I (B)

\$ 33,048

TOTAL DEBT SERVICE

\$ 51,387

DEBT SERVICE RESERVE

Existing

\$ 2,219

Proposed

\$ 3,305

TOTAL DEBT SERVICE RESERVE

\$ 5,524

SURPLUS (DEFICIT)

\$ 2,154

DEBT COVERAGE (A/B)

115%

**UNITED STATES DEPARTMENT OF AGRICULTURE  
 RURAL UTILITIES SERVICE  
 Water and Waste Processing Checklist**

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		HAVE	3
Bulletin 1780-22	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant		HAVE	3
	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		HAVE	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney			5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney			5
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant			1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		HAVE	1
	EJCDC No. 1910-1-FA	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Site Visit		S.I. 1780-2	RUS			3
	Processing Conference	1	1780.39(a)	RUS			3
	Environmental Report	2	1794	Applicant			3
	Environmental Assessment	2	1794	RUS/ Engineer			3
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant			3
<b>Bulletins 1780-2 1780-3</b>	Preliminary Engineering Report	2	1780.33(c)	Engineer		HAVE	6
	Staff Engineer PER Review	1	1780.33(c)	RUS		HAVE	3
	Bill Analysis for existing system(s)	2	1780.33(c)	Applicant/ Engineer		HAVE	8
	Projected Bill Analysis for New Users	2	1780.33(c)	Applicant/ Engineer		HAVE	8
	Statement reporting the <u>total</u> number of <u>potential</u> users		1780.33(c)	Applicant/ Engineer		HAVE	8
	Copy of Existing Rate Tariff	2	1780.33	Applicant		HAVE	8
	Applicant's IRS Tax Number(TIN)	1	1780.33(g)	Applicant		HAVE	3
	Agency Det- ermination on the Availability of "Other Credit" with Docu- mentation	1	1780.7(d)	RUS			3
	Documentation on Service Area	1	1780.11	RUS			3

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
<b>Bulletin 1780-1</b>	Project Selection Criteria	2	1780.17	RUS			1
<b>Automated Form</b>	Grant Determination	3	1780.35(b)	RUS		HAVE	2
	Letter of Conditions	7	1780.41 (a)(5)	RUS		HAVE	3
<b>AD 1049</b>	Certification Regarding Drug-Free Workplace	1	1780.33(h)	Applicant			5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	Applicant			5
<b>Exhibit A / A-1</b>	Certifications Regarding Lobbying	2	1780.33(h)	Applicant			2
<b>RD 1942-45</b>	Project Summary	3	1780.41(a)	RUS			1
<b>RD 442-7</b>	Operating Budget	3	1780.33(h)	Applicant			3
<b>RD 1942-14</b>	Project Fund Analysis	3	1780.41(a)	RUS			2
<b>RD 1940-1</b>	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant			2
<b>Bulletin 1780-12</b>	Association Water or Sewer System Grant Agreement	2	1780.45(c)	RUS/ Applicant			2
<b>RD 1942-46</b>	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant			3
<b>AD 1047</b>	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Relationships/ Associations with Agency Employees	1	1780.1(f)	RUS			3
<b>RD 1910-11</b>	Applicant Certification, Federal Collect- ion Policies	1	1780.33(h)	Applicant			3
<b>Bulletin 1780-27</b>	Loan Resolution	1	1780.45 (a)(2)	Applicant			5
<b>RD 400-1</b>	Equal Opportunity Agreement	1	1901-E	Applicant			6
<b>RD 400-4</b>	Assurance Agreement	1	1901-E	Applicant			3
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel			5
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant			5
	Water Users Agreement (Copy)	1	1780.39 (c)(3)	Applicant			5
	Evidence of Users:						
	1. Map of Users with each identified by number	1	LOC	Applicant			Separate File
	2. List of Signed Users Numbered to Map	1	LOC	Applicant			5
	3. List of Declination Statements Numbered to Map	1	LOC	Applicant			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	4. Evidence of Tap Fees Being Paid	1	LOC	Applicant			5
	5. Having Users Agreements and Declination Statements Available		LOC	Applicant			
	6. Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
RD 442-30	Water Purchase Contract	1	1780.62/ 1780.63	Applicant/ Attorney/ RUS			5
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
Lender Agreement/ Bulletin 1780-10/ 1780-10a	Interim Financing Documentation	1	1780.39(d)	Applicant/ RUS			1
	DOH Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Evidence of "Other Funds"	1	1780.44(f)	Applicant			2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	Positive Program to Encourage Connections when Completed	1	1780.39 (c)(5)	Applicant			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Documentation Relative to Health or Sanitary Hazards	1	1780.1 (c)(1) 1780.13 (b)(1)	RUS/State Health Department			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			5
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
<b>RD 1927-10</b>	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
<b>RD 400-8</b>	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
	Flood Insurance Policy	1	1780.39(g)	Applicant			7
<b>440-24</b>	Fidelity Bond	1	1780.39(g)	Applicant			7
<b>1924-16</b>	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6
<b>AD 1048</b>	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	OGC Final Opinion	1	1780.45(g)	RUS			5



**United States Department of Agriculture  
Rural Development  
West Virginia State Office**

May 18, 2007

Sharon Postalwait, Chairperson  
Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

**RE: Amendment No. 1 to  
Letter of Conditions**

Dear Ms. Postalwait:

This letter, with Attachment No. 1 amends the letter of conditions dated July 1, 2002 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development (RD). Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$600,000, a subsequent RUS loan in the amount of \$850,000, an initial RUS grant in the amount of \$1,800,000, a subsequent RUS grant in the amount of \$450,000, and other funding in the amount of \$1,500,000, for a total project cost of \$5,200,000. The other funding is planned in the form of a grant from the Appalachian Regional Commission.

Subject to the requirements noted herein, all of the conditions of the July 1, 2002 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

Federal Building • 75 High Street • Suite 320 • Morgantown, WV 26705-7500  
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836  
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

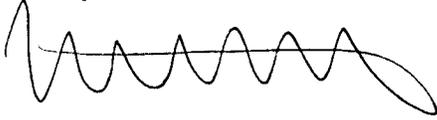
The conditions referred to above are as follows:

1. Loan Repayment – The subsequent loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. The remaining 456 months will be equal amortized monthly installments. For planning purposes, use a 4.125% interest rate and a monthly amortization factor of .00435 which provides for a monthly payment of \$3,698 on the subsequent loan. (The monthly payment for the initial \$600,000 loan is \$2,754 and the monthly payment for the subsequent \$850,000 loan is \$3,698, for a total loan of \$1,450,000 and a total monthly payment of \$6,452.
2. Users – The conditional commitment is based upon the District providing evidence that there will be at least 540 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 150 signed user agreements and a certification from the District that identifies and attests to the number of users that are actually connected to the District's water system at the time you request authorization to advertise the project for construction bids.
3. Amendments to Professional Agreements – Amendments to the following professional agreements must be submitted to our office for review and approval:
  - a. Agreement for Engineering Services
  - b. Legal Services Agreement
  - c. Bond Counsel Engagement Letter
  - d. Agreement with Accountant
4. The bond for the \$850,000 subsequent loan will need to be a separate bond and it will include the interest rate determined applicable prior to loan closing. It will be satisfactory for the subsequent loan bond to be described in the same loan resolution as the \$600,000 initial loan and for all other information and items of the loan resolution and bond transcript to reflect a \$1,450,000 total issue consisting of two or more bonds. A copy of this letter should be provided to your bond counsel immediately.
5. Public Service Commission (PSC) Approval - You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.
6. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
  - RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
  - Form 1940-1 – "Request for Obligation of Funds"
  - RUS Bulletin 1780-27 – "Loan Resolution"
  - Form RD 1942-46 - "Letter of Intent to Meet Conditions"

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RD reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RD reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert M. Steptoe, III'. The signature is fluid and cursive, with a large initial 'R' and a long, sweeping tail.

ROBERT M. STEPTOE, III  
State Director

Enclosures

cc: Rural Development Specialist  
Parkersburg, WV

Miller & Miller, A.C.  
Spencer, WV

Thomas N. Whittier, Esquire  
Spencer, WV

William K. Bragg, Esquire  
Goodwin & Goodwin, LLP  
Charleston, WV

Boyles & Hildreth, Consulting Engineers  
Spencer, WV

West Virginia Development Office  
Charleston, WV

Project Construction Budget

<u>PROJECT COST</u>	<u>ARC GRANT</u>	<u>RUS SUB. GRANT</u>	<u>RUS SUB. LOAN</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 1,500,000	\$ 372,900	\$ 789,185	\$ 1,172,300	\$ 352,700	\$ 4,187,085
CONST. CONTINGENCY		\$ 59,915		\$ 115,300	\$ 34,700	\$ 209,915
LAND & RIGHTS			\$ 5,000	\$ 5,700	\$ 4,300	\$ 15,000
LEGAL FEES			\$ 12,500	\$ 5,700	\$ 1,800	\$ 20,000
BOND COUNSEL			\$ 12,500	\$ 7,700	\$ 2,300	\$ 22,500
ACCOUNTING			\$ 2,500	\$ 1,900	\$ 600	\$ 5,000
ENGINEERING FEES		\$ 5,485	\$ 1,515	\$ 396,900	\$ 126,100	\$ 530,000
Basic - \$315,000						
Insp. - \$195,000						
Special - \$20,000						
INTEREST			\$ 26,800		\$ 54,000	\$ 80,800
EQUIPMENT				\$ 16,500	\$ 8,500	\$ 25,000
PROJECT CONTG.		\$ 11,700		\$ 78,000	\$ 15,000	\$ 104,700
<b>TOTAL</b>	<b>\$ 1,500,000</b>	<b>\$ 450,000</b>	<b>\$ 850,000</b>	<b>\$ 1,800,000</b>	<b>\$ 600,000</b>	<b>\$ 5,200,000</b>

Rates

Available for general domestic, commercial, and industrial service.

First	2,000	gallons @	\$ 11.19	per M gallons
Next	8,000	gallons @	\$ 11.01	per M gallons
Over	10,000	gallons @	\$ 10.83	per M gallons

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

5/8" x 3/4"	meter	\$ 22.38	per month
3/4"	meter	\$ 33.57	per month
1"	meter	\$ 55.95	per month
1 1/2"	meter	\$ 111.90	per month
2"	meter	\$ 179.04	per month
3"	meter	\$ 335.70	per month
4"	meter	\$ 559.50	per month
6"	meter	\$ 1,119.00	per month
8"	meter	\$ 1,790.40	per month

Minimum Monthly Bill \$ 22.38 for 2,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$100.00

After the start of construction, there shall be a charge of \$250.00 for connection to the system.

Reconnection Charge

\$20.00

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

MT. ZION PUBLIC SERVICE DISTRICT  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM-RESIDENTIAL

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 2,000	Next 8,000	Over 10,000	TOTAL REVENUE
0 - 2,000	130	111.82	130				
2,001 - 10,000	207	857.75		414	443.75		
All over 10,000	9	114.87		18	72	24.87	
<hr/>							
Monthly Total	346	1084.44	130	432	515.75	24.87	
<hr/>							
Proposed Rates			\$ 22.38	\$ 11.19	\$ 11.01	\$ 10.83	
Monthly Revenues			\$ 2,909.40	\$ 4,834.08	\$ 5,678.41	\$ 269.34	\$ 13,691.23
Annual Revenues			\$ 34,912.80	\$ 58,008.96	\$ 68,140.89	\$ 3,232.11	\$ 164,294.76

Adjustment Factor      1.004112

**Adjusted Annual Revenue \$ 164,970.34**

MT. ZION PUBLIC SERVICE DISTRICT  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM-COMMERCIAL

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 2,000	Next 8,000	Over 10,000	TOTAL REVENUE
0 - 2,000	25	18.42	25				
2,001 - 10,000	10	45.28		20	25.28		
All over 10,000	8	309.03		16	64	229.03	
<hr/>							
Monthly Total	43	372.73	25	36	89.28	229.03	
<hr/>							
Proposed Rates		\$ 22.38	\$ 11.19	\$ 11.01	\$ 10.83		
<hr/>							
Monthly Revenues		\$ 559.50	\$ 402.84	\$ 982.97	\$ 2,480.39	\$ 4,425.71	
<hr/>							
Annual Revenues		\$ 6,714.00	\$ 4,834.08	\$ 11,795.67	\$ 29,764.74	\$ 53,108.49	
<hr/>							
					Adjustment Factor	1.073834	
					<b>Adjusted Annual Revenue</b>	<b>\$ 57,029.70</b>	

MT. ZION PUBLIC SERVICE DISTRICT  
 USE AND INCOME ANALYSIS  
 EXISTING SYSTEM-PUBLIC AUTHORITY

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 2,000	Next 8,000	Over 10,000	TOTAL REVENUE
0 - 2,000							
2,001 - 10,000	1	6.15		2	4.15		
All over 10,000							
<hr/>							
Monthly Total	1	6.15	0	2	4.15	0	
<hr/>							
Proposed Rates			\$ 22.38	\$ 11.19	\$ 11.01	\$ 10.83	
Monthly Revenues			\$ -	\$ 22.38	\$ 45.69	\$ -	\$ 68.07
Annual Revenues			\$ -	\$ 268.56	\$ 548.30	\$ -	\$ 816.86
							Adjustment Factor 0.960946
							<b>Adjusted Annual Revenue \$ 784.96</b>

MT. ZION PUBLIC SERVICE DISTRICT  
 USE AND INCOME ANALYSIS  
 EXTENSION AREA

Blocking	Cust.	Gal/ Mo.	Minimum Bills	FIRST 2,000	NEXT 8,000	OVER 10,000	TOTAL REVENUE
0 -2,000	56	47.98	56				
2,001 - 10,000	90	372.02		180	192.02		
All over 10,000	4	51.05		8	32	11.05	
<b>Monthly Total</b>	<b>150</b>	<b>471.05</b>	<b>56</b>	<b>188</b>	<b>224.02</b>	<b>11.05</b>	
<b>Proposed Rates</b>			<b>\$ 22.38</b>	<b>\$ 11.19</b>	<b>\$ 11.01</b>	<b>\$ 10.83</b>	
<b>Monthly Revenues</b>			<b>\$ 1,253.28</b>	<b>\$ 2,103.72</b>	<b>\$ 2,466.46</b>	<b>\$ 119.67</b>	<b>\$ 5,943.13</b>
<b>Annual Revenues</b>			<b>\$ 15,039.36</b>	<b>\$ 25,244.64</b>	<b>\$ 29,597.52</b>	<b>\$ 1,436.06</b>	<b>\$ 71,317.58</b>

Adjustment Factor      1.004112

**Adjusted Annual Revenue \$ 71,610.84**

MT. ZION PUBLIC SERVICE DISTRICT  
OPERATING BUDGET

OPERATING INCOME

Metered Sales	\$	294,395	
Penalties	\$	4,500	
TOTAL OPERATING INCOME			<u>\$ 298,895</u>

NON OPERATING INCOME

Interest income	\$	208	
TOTAL NON OPERATING INCOME			<u>\$ 208</u>

TOTAL INCOME

\$ 299,103

EXPENSES

O & M	\$	190,309	
Taxes	\$	3,500	
TOTAL EXPENSES			<u>\$ 193,809</u>

INCOME AVAILABLE FOR D/S

\$ 105,294

DEBT SERVICE

Existing Bond P & I	\$	14,076	
Proposed Bond P & I	\$	33,048	
Proposed Bond P & I	\$	44,376	
TOTAL DEBT SERVICE			<u>\$ 91,500</u>

DEBT SERVICE RESERVE

Existing	\$	1,408	
Proposed-initial loan	\$	3,305	
Proposed-sub. Loan	\$	4,438	

TOTAL DEBT SERVICE RESERVE \$ 9,151

SURPLUS (DEFICIT)

\$ 4,643

DEBT COVERAGE

115%



LAW OFFICES

**GOODWIN & GOODWIN, LLP**

300 SUMMERS STREET, SUITE 1500  
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107  
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000  
TELECOPIER (304) 344-9692

[www.goodwingoodwin.com](http://www.goodwingoodwin.com)

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201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
(304) 485-2345

P.O. Box 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
(304) 372-2651

April 27, 2010

Ms. Sara Boardman, Executive Director  
West Virginia Municipal Bond Commission  
1207 Quarrier Street, Suite 401  
Charleston, WV 25301

Re: Mt. Zion Public Service District, Water Revenue Bonds, Series 2010

Dear Sara:

Enclosed please find 2 New Issue Report Forms. The first has been prepared in connection with the above-referenced transaction and sent to you for filing in your office in regard to the same. Upon completion of the transcript, we will forward a bound copy to you for your reference.

The second report concerns the transfer of reserve account deposits from prior bond issues. The District is making arrangements to have those deposits transferred to you.

If you have any questions concerning these filings, please feel free to contact me.

Sincerely yours,



William K. Bragg, Jr.

WKB/aks  
Enclosure

WV MUNICIPAL BOND COMMISSION  
1207 Quarrier Street, Suite 401  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM  
Date of Report: April 23, 2010

ISSUE: Mt. Zion Public Service District, Water Revenue Bonds, Series 2010  
ADDRESS: P.O. Box 122  
Grantsville, WV 26147 COUNTY: Calhoun  
PURPOSE: New Money X  
OF ISSUE: Refunding \_\_\_ Refunds issue dated: N/A  
ISSUE DATE: April 26, 2010 CLOSING DATE: April 26, 2010  
ISSUE AMOUNTS: \$600,000 and \$850,000 RATES: 4.125% and 4.125%  
1ST DEBT SERVICE DUE: May 26, 2010 1ST PRINCIPAL DUE: April 26, 2012  
1ST DEBT SERVICE AMT.: \$ \_\_\_ \* PAYING AGENT: Municipal Bond Comm.\*\*

BOND COUNSEL: Goodwin & Goodwin, LLP LENDER: US Dep't. of Agriculture  
Contact Person: W.K. Bragg, Jr. Contact Person: Virginia McDonald  
Phone: (304) 346-7000 Phone: (304) 372-6231, Ext. 4

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Sharon Postalwait  
Position: Chairwoman  
Phone: (304) 354-6334

-----DEPOSITS TO MBC AT CLOSE:-----  
By \_\_\_ Wire \_\_\_ Accrued Interest: \$ \_\_\_ 0  
\_\_\_ Check \_\_\_ Capitalized Interest: \$ \_\_\_ 0  
\_\_\_ Reserve Account: \$ \_\_\_ 0  
\_\_\_ Other: \$ \_\_\_\_\_

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:-----  
By \_\_\_ Wire \_\_\_ To Escrow Trustee: \$ \_\_\_ N/A  
\_\_\_ Check \_\_\_ To Issuer: \$ \_\_\_ N/A  
\_\_\_ IGT \_\_\_ To Cons. Invest. Fund: \$ \_\_\_ N/A  
\_\_\_ Other: \$ \_\_\_\_\_

Notes: \* Subject to actual amount advanced at closing.  
\*\* Only if Lender no longer owns the Bonds.

Notes: \_\_\_\_\_  
FOR MUNICIPAL BOND COMMISSION USE ONLY:  
DOCUMENTS  
REQUIRED: \_\_\_\_\_  
TRANSFERS  
REQUIRED: \_\_\_\_\_



**COPY**

\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 2010 A

No. AR-1

Date: April 26, 2010

FOR VALUE RECEIVED, the MT. ZION PUBLIC SERVICE DISTRICT, a public service district created, expanded and contracted pursuant to the Act by orders issued by The County Commission of Calhoun County, in Calhoun County, West Virginia (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government"), or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Six Hundred Thousand and 00/100 Dollars (\$600,000), plus interest on the unpaid principal balance, at the rate of four and 125/1000 percent (4.125%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,610.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to

the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security hereof or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a water system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B(1974), WATER REVENUE BONDS, SERIES 1984, WATER REVENUE BOND, SERIES 1998, AND WATER REVENUE BOND, SERIES 2010 B OF THE ISSUER DESCRIBED IN THE RESOLUTIONS ISSUED WITH RESPECT TO EACH SERIES.

The initial address of Government for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

By: Shaun Stewart  
Chairperson  
P.O. Box 122  
Grantsville, WV 26147

ATTEST:

By: Shirley C. Mace  
Secretary

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$316,300.00	4/26/10	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

**SPECIMEN**

TOTAL \$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: \_\_\_\_\_

In the presence of:

\_\_\_\_\_

COPY

\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 2010 B

No. BR-1

Date: April 26, 2010

FOR VALUE RECEIVED, the MT. ZION PUBLIC SERVICE DISTRICT, a public service district created, expanded and contracted pursuant to the Act by orders issued by The County Commission of Calhoun County, in Calhoun County, West Virginia (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government"), or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000), plus interest on the unpaid principal balance at the rate of four and 125/100 percent (4.125%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$3,698.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a water system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority, acting on behalf of the Rural Utilities Service, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B(1974), WATER REVENUE BONDS, SERIES 1984, WATER REVENUE BOND, SERIES 1998, AND WATER REVENUE BOND, SERIES 2010 A OF THE ISSUER DESCRIBED IN THE RESOLUTIONS ISSUED WITH RESPECT TO EACH SERIES.

The initial address of Government for purposes of bond registration is P.O. Box 678, Morgantown, WV 26505.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

By



Chairperson

P.O. Box 122

Grantsville, WV 26147

ATTEST:

By



Secretary

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$16,700.00	4/26/10	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

SPECIMEN

TOTAL \$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

DATED: \_\_\_\_\_

\_\_\_\_\_

In the presence of:

\_\_\_\_\_



United States Department of Agriculture • Rural Development  
530 Freedom Road, Ripley, WV 25271

Phone: 304-372-6231, Ext. 4 • Fax 304-372-6856 • TTY/TDD 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

# TRANSMITTAL SHEET

---

Subject: Mt. Zion Public Service District    DATE: 4/26/2010

---

To: Bill Bragg

From: Jennifer L Bruce

---

MESSAGE:

Mr. Bragg,

Please find enclosed copies of the fully executed \$600,000 and \$850,000 Water Revenue Bonds for the subject borrower which closed on April 26, 2010.

If you should have any questions, please contact our office at the telephone number above.

Thank you,

A handwritten signature in cursive script that reads "Jennifer L Bruce". The signature is written in black ink and is positioned above the printed name and title.

Jennifer L Bruce  
Area Technician

---

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).



**UCC FINANCING STATEMENT**

201038280925

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

04 28 2010 11:56AM

WV SECRETARY OF STATE

A. NAME & PHONE OF CONTACT AT FILER [optional]  
 William K. Bragg, Jr. 304-346-7000

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

William K. Bragg, Jr.  
 Goodwin & Goodwin, LLP  
 300 Summers Street, Suite 1500  
 Charleston, WV 25301-1678

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Mt. Zion Public Service District					
O R	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	1c. MAILING ADDRESS P.O. Box 122		CITY Grantsville	STATE WV	POSTAL CODE 26147
1d. TAX ID #, SSN OR EIN 55-0489358	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Public service district	1f. JURISDICTION OF ORGANIZATION West Virginia	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
O R	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME United States Department of Agriculture, Rural Utilities Service					
O R	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	3c. MAILING ADDRESS 530 Freedom Road		CITY Ripley	STATE WV	POSTAL CODE 25271

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, water system and other property as provided by Bond Resolution authorizing the issuance of \$600,000 and \$850,000 Mt. Zion Public Service District, Water Revenue Bonds, Series 2010 A and Series 2010 B, and by Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public-finance transaction of the Mt. Zion Public Service District, Calhoun County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

5. ALTERNATIVE DESIGNATION (if applicable):  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record)(or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA



HEDGES, JONES, WHITTIER AND HEDGES

ATTORNEYS AT LAW  
POST OFFICE BOX 7  
SPENCER, WEST VIRGINIA 25276

GROVER F. HEDGES (1885-1955)  
G.F. HEDGES, JR. (1914-1986)

ORTON A. JONES  
THOMAS N. WHITTIER  
CHRISTINE M. HEDGES

216 MARKET STREET, SUITE 201  
FIRST NATIONAL BANK BUILDING  
TELEPHONE (304) 927-3790  
FACSIMILE (304) 927-6050

April 26, 2010

United States of America  
United States Department of Agriculture,  
Rural Utilities Service  
530 Freedom Road  
Ripley, WV 25271

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

Re: \$600,000 Mt. Zion Public Service District,  
Water Revenue Bond, Series 2010 A and  
\$850,000 Mt. Zion Public Service District,  
Water Revenue Bond, Series 2010 B

Ladies and Gentlemen:

As attorney for the Mt. Zion Public Service District, Calhoun County, West Virginia (the "District"), we have examined the record of proceedings relating to the issue of the Mt. Zion Public Service District, Water Revenue Bond, Series 2010 A and Revenue Bond Series 2010 B, dated April 26, 2010, in the aggregate principal amounts of \$600,000 and \$850,000 (collectively, the "Bonds") and have considered the validity of the bond issues. In this connection, we have examined and am familiar with the Constitution and statutes of the State of West Virginia, including Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended, the Orders of the Calhoun County Commission creating and expanding the District, related minutes and a certified copy of the Resolution passed by the District (the "Resolution"), a copy of the certificate of convenience and public necessity issued by the West Virginia Public Service Commission, the water rates necessary to pay for the Bonds as described in the Resolution, copies of contracts and other documents relating to the funding and approval for the project by the District, including but not limited to the construction contract, plans and specifications, and other documents relating to the project, the Letter of Conditions forwarded by the United States Department of Agriculture, Rural Development to the District, and other documents incidental and material to the issuance by the District of the Bonds. From such familiarity and examination, we are of the opinion as follows:

1. The District is a duly created and presently existing public service district of the State of West Virginia with full power and authority to construct and acquire and to operate and maintain the Water System and to issue and sell the Bonds, all under the provisions of Chapter 16, Article

13A (the "Act"), of the Code of West Virginia, 1931, as amended, and other applicable provisions of law.

2. The District, through its Board, has legally and effectively enacted the Resolution and has duly authorized the issuance and delivery of the Bonds to the United States of America, and the Chairperson of the Board is duly and lawfully entitled and authorized to execute the Bonds.

3. The Bonds constitute a valid and legally enforceable special obligation of the District secured by and payable solely from a parity lien on and pledge of the net revenues of the System on parity with the 1974 Bond, the 1984 Bond, and the 1998 Bond (collectively, the "Prior Bonds"), as described in the Resolution, all in accordance with the terms of the Bonds and the Resolution.

4. The District, through its Board, has legally and effectively enacted the water rates necessary to make the payments on the Bonds and the Prior Bonds from the rates described in the Resolution, and it has lawfully enacted and has filed a tariff which has been approved by the West Virginia Public Service Commission for the water rates that are described in the Resolution.

5. The District has obtained from the West Virginia Public Service Commission a valid, final and non-appealable certificate of convenience and necessity under Case No. 08-1360-PWD-CN which lawfully authorizes the District to proceed with the construction and operation of the District's Water System and approval of and issuance of the Bonds.

6. The District, through its Board, has legally and effectively adopted all other resolutions, contracts and agreements that are necessary to comply with the letter of conditions previously forwarded and conditions required in the letter of conditions as well as complied with all necessary provisions of the Resolution necessary before the Bonds may be issued and delivered and that the Bonds can in fact be lawfully issued and delivered.

7. The execution and delivery of the Bonds and the enactment of the Resolution and compliance with the provisions of them will not conflict with nor constitute a breach of or default under any agreement or other instrument known to me to which the District is a party, or any court order or consent decree known to me to which the District is subject, or any law or administrative regulation to which the District is subject.

8. All authorizations, consents, approvals and reviews by governmental bodies or regulatory authorities then required for the District's adoption, execution or performance of the Bonds and the Resolution have been obtained or affected, and we have no reason to believe that the District will be unable to obtain or affect any additional such authorizations, consents or approvals that may be required in the future for performance of any of them by the District.

9. To the best of my knowledge there is presently no action pending or suit pending against the Mt. Zion Public Service District before any Court, public board or body. There were formally two (2) civil actions pending in the Circuit Court of Calhoun County, West Virginia against the Mt. Zion Public Service District in which the procedures of the district in the bidding of this project were at issue. These civil actions - Welding, Inc. vs. Mt. Zion Public Service District, Boyles & Hildreth, Consulting Engineers, Inc. And Mid-Atlantic Storage Systems, Inc.

Calhoun County Civil Action 09-C-29 and Ronald Lane, Inc. vs. Mt. Zion Public Service District, Boyles & Hildreth, Consulting Engineers, Inc. And Mid-Atlantic Storage Systems, Inc. Calhoun County Civil Action 09-C-30 have both been dismissed in so far as they pertain to the Mt. Zion Public Service District.

These dismissals were however, without prejudice. This means that the Plaintiffs could at any time re-file the civil actions against Mt. Zion Public Service District. Counsel for the Plaintiffs in said civil actions have indicated that the Plaintiffs have no intentions of re-filing any civil action against Mt. Zion Public Service District. Counsel indicated that the Plaintiffs would file an amended Complaint against Boyles & Hildreth Engineering, but not against the District. The Plaintiffs have in fact filed a Motion for Leave To Amend and provided a copy of their amended Complaint which does not make any allegations against the Mt. Zion Public Service District.

To the best of my knowledge there is no action, suit or proceeding at law or at equity threatened against or affecting the Mt. Zion Public Service District at present. The Plaintiffs in the above noted civil actions threatened to bring suit against the Mt. Zion Public Service District several times in the past before actually bringing suit. Now that the suits have been dismissed the said Plaintiffs and their counsel have only indicated that they will not be suing the Mt. Zion Public Service District, so no suit is presently pending.

There is pending before the Public Service Commission of West Virginia a general investigation of the Mt. Zion Public Service District. This action was initially filed by the Calhoun County Commission. Since the filing of this action the district has changed personnel, revised a number of its policies, applied for a Rule 19A Rate Increase and entered into a contract with a new CPA. The Mt. Zion Public Service District has provided all available information requested by the Public Service Commission staff and has worked with members of the staff to remedy various problems. The Mt. Zion Public Service District expects the investigation to continue for a period of time and believes that the investigation will eventually be dismissed.

No facts exist relating to the composition of the Mt. Zion Public Service District Board or the exercise of their duties, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Bond or the Bond Resolution.

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bonds and in the Bond Resolution may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,



Thomas N. Whittier

TNW/lrl



LAW OFFICES

**GOODWIN & GOODWIN, LLP**

300 SUMMERS STREET, SUITE 1500  
CHARLESTON, WEST VIRGINIA 25301-1678

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500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
(304) 372-2651

April 26, 2010

Mt. Zion Public Service District  
P. O. Box 122  
Grantsville, WV 26147

United States Department of Agriculture  
Rural Utilities Service  
530 Freedom Road  
Ripley, WV 25271

Re: \$600,000 Mt. Zion Public Service District  
Water Revenue Bond, Series 2010 A and  
\$850,000 Mt. Zion Public Service District  
Water Revenue Bond, Series 2010 B

Ladies and Gentlemen:

We have served as bond counsel for the above-referenced bonds. We have examined a record of proceedings relating to the issuance by the Mt. Zion Public Service District (the "Issuer") of its \$600,000 Water Revenue Bond, Series 2010 A (the "Series 2010 A Bond"), bearing interest at the rate of four and 125/100 percent (4.125%) per annum, and dated the date hereof. We have examined a record of proceedings relating to the issuance by the Issuer of its \$850,000 Water Revenue Bond, Series 2010 B (the "Series 2010 B Bond") and, together with the Series 2010 A Bond, the "Bonds"), bearing interest at the rate of four and 125/1000 percent (4.125%) per annum, and dated the date hereof.

The Bonds have been authorized by a resolution (the "Bond Resolution") duly adopted by the Public Service Board of the Issuer, which is the governing body of the Issuer.

Interest only on the Series 2010 A Bond is payable in monthly installments in the twenty four (24) months after delivery of the Series 2010 A Bond and thereafter the principal of and interest on the Series 2010 A Bond is payable in monthly installments of \$2,610.00 to and including the 480th month after the date of the Series 2010 A Bond, the

# GOODWIN & GOODWIN, LLP

April 26, 2010

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final installment to be in the sum of the unpaid principal and interest due on the date thereof. Interest only on the Series 2010 B Bond is payable in monthly installments in the twenty four (24) months after delivery of the Series 2010 B Bond and thereafter the principal of and interest on the Series 2010 B Bond is payable in monthly installments of \$3,698.00 to and including the 480th month after the date of the Series 2010 B Bond, the final installment to be in the sum of the unpaid principal and interest due on the date thereof.

Principal installments upon the Bonds are subject to payment in advance as provided therein and in the Bond Resolution.

The Bond Resolution and the Bonds provide that the issue is for the purpose of financing the costs of construction and acquisition of the improvements and additions to an existing water system (the "System") of the Issuer.

Upon issuance of the Bonds, the Issuer has outstanding the 1974 Bond, the 1984 Bond, the 1998 Bond and the Bond, all as described in the Bond Resolution.

We have relied, in part, upon the opinion letter of Hedges, Jones, Whittier and Hedges, attorney to the Issuer, and the General Certificate of Issuer and attorney for Issuer.

It is our opinion that:

1. The Issuer is duly organized and presently existing public service district and is a public corporation and a political subdivision of the State of West Virginia with full power and authority to construct, acquire, operate and maintain the System and issue and sell the Bonds, all under the provisions of Chapter 16, Article 13A (the "Act"), of the Code of West Virginia of 1931, as amended, and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Bond Resolution in connection with the bond issue and issued, sold and delivered the Bonds to the United States of America, Rural Utilities Service.

3. As of this date, the Bonds are in due and proper form, have been duly executed and delivered and constitute a valid and legally enforceable special obligations of the Issuer. The Bonds are secured by a statutory mortgage lien, on parity with the 1974 Bond, the 1984 Bond and the 1998 Bond (collectively, the "Prior Bonds"), as described in the Bond Resolution. The Bonds are payable from a pledge of the net revenues of the System, which pledge is on parity with the pledge granted to the Prior Bonds, all in accordance with the terms of the Bonds and the Bond Resolution.

# GOODWIN & GOODWIN, LLP

April 26, 2010

Page 3

4. The Bonds and the interest thereon are, under the Act, exempt from taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

5. The Bonds have not been issued on the basis that the interest thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

6. It is to be understood that the rights of the holder of the Bonds and the enforceability of the Bonds and the Bond Resolution, and the liens and pledges set forth therein, may be subject to and this opinion is limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed Bonds numbered AR-1 and BR-1, and, in our opinion, the form of said Bonds and their execution are regular and proper.

Respectfully submitted,

*Goodwin & Goodwin, LLP*  
GOODWIN & GOODWIN, LLP



MT. ZION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$40,000 WATERWORKS REVENUE BONDS, SERIES B, OF MT. ZION PUBLIC SERVICE DISTRICT TO FINANCE CONSTRUCTION OF ADDITIONS TO ITS EXISTING WATERWORKS; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDERS OF THE BONDS AND FOR A STATUTORY MORTGAGE LIEN UPON THE SYSTEM IN FAVOR OF THE HOLDERS OF THE BONDS; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code and other applicable provisions of law. Mt. Zion Public Service District (herein called the "District") is a public service district created pursuant to said Article 13A by the County Court of Calhoun County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

- (A) The District now has a public waterworks system.
- (B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the District, and, accordingly, it is hereby ordered, that there be constructed additions, extensions and improvements to the waterworks system of the District consisting of transmission lines to a new well with all necessary appurtenant facilities (herein called the "Project"), particularly described in and according to the plans and specifications prepared by J. H. Milam, Inc., Consulting Engineers, of Dunbar, West

Virginia (herein called the "Consulting Engineer"), and heretofore filed in the office of the Secretary of the Public Service Board of the District (herein called the "Board").

(C) It is necessary for the District to issue its revenue bonds in the principal amount of \$40,000 to finance the cost of such construction in the manner hereinafter provided.

(D) The estimated maximum cost of the construction of the Project is \$40,000, all which will be obtained from the proceeds of sale of the Series B Bonds herein authorized.

(E) The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Series B Bonds prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized by this resolution.

(F) The period of usefulness of the System after completion of the Project is not less than forty years.

(G) There are outstanding obligations of the District which will rank on a parity with the Series B Bonds as to lien and source of and security for payment, as follows:

The outstanding Water Distribution System Revenue Bond, Series A, of the District, dated on the 14th day of July, 1966, in the principal amount of \$85,600 (herein called the "Series A Bonds"), authorized by a resolution of the Board adopted on the 14th day of July, 1966 (herein called the "1966 Resolution").

(II) The entire principal amount outstanding of the Series A Bonds is held or insured by Farmers Home Administration. Farmers Home Administration has heretofore consented to the issuance of the Series B Bonds as herein authorized and has seen and approved a copy of this Resolution prior to the adoption hereof. Said Farmers Home Administration is expected by the Board to purchase the entire principal amount of the Series B Bonds.

(I) The District has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Series B Bonds, or will have so complied prior to issuance of any of the Series B Bonds including, among other things, the consent and approval, pursuant to the Act, of the issuance of the Series B Bonds by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Series B Bonds by those who shall hold the same from time to time, this resolution shall be deemed to be and shall constitute a contract between the District and such Bondholders, and the covenants and agreements herein set forth to be performed by the District shall be for the equal benefit, protection and security of the legal holders of any and all such Series B Bonds, and the coupons appertaining thereto, all which shall be of equal rank without preference; priority or distinction of any of the Series B Bonds or coupons over any other thereof, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings in this resolution unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Board" means the Public Service Board of the District, the governing body of the District under the Act.

"Bond Fund" means the Mt. Zion Public Service District Revenue Bond and Interest Sinking Fund established by the 1966 Resolution and continued hereby.

"Bonds" means the \$40,000 Waterworks Revenue Bonds, Series B, originally authorized to be issued pursuant to this Resolution and shall also be deemed to include, where appropriate, the interest coupons appertaining to the Series B Bonds, and also includes where appropriate the Series A Bonds and the interest coupons appertaining thereto.

"Series A Bonds" means the Series A Bonds defined above.

"Series B Bonds" means the Bonds hereby authorized to be issued.

"Chairman" means the Chairman of the Board.

"Consulting Engineer" means J. H. Milam, Inc., Consulting Engineers, Dunbar, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the District as Consulting Engineer for the System.

"District" means Mt. Zion Public Service District, of Calhoun County, West Virginia, and, where appropriate, also means the Public Service Board thereof.

"Established by the 1966 Resolution" means also "and continued by this Resolution."

"Facilities" or "waterworks facilities" means all the facilities of the System and also any facilities which may hereafter be added to the System by any additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Government" means United States Department of Agriculture, Farmers Home Administration and any successor thereof.

"Herein" means in this Resolution.

"Holder of the Bonds" or "Bondholder" or any similar term means any person who shall be the bearer or owner of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to the bearer, or of any coupons representing interest accrued or to accrue on said Bonds.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the District relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Original Purchaser" means the purchaser, directly from the District, of the Series B Bonds or of any part of such series.

"Project" shall have the meaning stated in Section 1.02(B) above.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the District, or accrued

to the District, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Board.

"System" means the complete waterworks system of the District as extended and improved by the Project, including all water facilities owned by the District and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the System; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the System after completion of the Project.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION,  
REGISTRATION AND ISSUE OF SERIES  
B BONDS

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Section 2.01. Authorization of Series B Bonds. Subject and pursuant to the provisions of this Resolution, Bonds of the District, to be known as "Waterworks Revenue Bonds, Series B", are hereby authorized to be issued in the aggregate principal amount of not exceeding Forty Thousand Dollars (\$40,000) for the purpose of financing the cost of the construction and acquisition of the Project.

Section 2.02. Description of Series B Bonds. The Series B Bonds may be issued in coupon or single, fully registered form, and shall be dated on the date of delivery. The Series B coupon Bonds shall be in the denomination of \$500 each, shall be numbered in order of maturity, lowest number first (numbers to bear the prefix "B"), and shall bear interest from date, payable annually on January 1 of each year, at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof. Coupon and single, fully registered Series B Bonds shall be exchangeable and interchangeable at the expense of the holder on 90 days' notice in writing to the District, provided that the single, fully registered Series B Bond issued upon initial delivery of the Series B Bonds by the District shall be exchanged for coupon Bonds at the expense of the District.

The Series B Bonds shall mature serially in numerical order, lowest numbers first, and the fully registered Series B Bond shall be payable in principal installments, on January 1 in years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1976	\$ 500	1989	\$ 500	2002	\$ 1,500
1977	500	1990	500	2003	1,500
1978	500	1991	500	2004	1,500
1979	500	1992	1,000	2005	1,500
1980	500	1993	1,000	2006	1,500
1981	500	1994	1,000	2007	1,500
1982	500	1995	1,000	2008	2,000
1983	500	1996	1,000	2009	2,000
1984	500	1997	1,000	2010	2,000
1985	500	1998	1,000	2011	2,000
1986	500	1999	1,000	2012	2,000
1987	500	2000	1,000	2013	2,500
1988	500	2001	1,500		

The Series B Bonds shall be redeemable prior to their respective stated dates of maturity at the option of the District, in whole or in part, in inverse numerical order on January 1, 1985, and on any January 1 thereafter at the price of the par value thereof and accrued interest to the date of redemption, subject to earlier redemption as provided in Section 3.01 hereof upon completion of the Project. If all the Bonds are held by the United States of America, or any agency thereof, all or any number of the bonds may be redeemed at any time in inverse numerical order.

Notice of the redemption of any of the Series B Bonds shall be published at least once not less than thirty nor more than sixty days prior to the date of redemption in a financial newspaper published in the City of New York, New York, and notice of any such redemption shall be sent by registered or certified mail to the holders of registered Series B Bonds. If all Series B Bonds to be redeemed are registered other than to bearer, no publication of such redemption need be made. Interest shall cease upon any of the Series B Bonds so called for prior redemption on the date fixed for redemption, provided payment thereof has been duly made or provided for.

The Series B Bonds shall be payable with respect to both principal and interest in lawful money of the United States of America at Calhoun County Bank, Grantsville, West Virginia, or at First National

City Bank, New York, New York, at the option of the holder unless otherwise provided in and for the fully registered Series B Bonds, and shall bear interest from their date, payable in accordance with and, as to Series B Bonds in coupon form and not registered as to interest, upon the surrender of the appurtenant interest coupons as they severally mature.

Section 2.03. Execution of Series B Bonds and Coupons.

The Series B Bonds shall be executed in the name of the District by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed any of the Series B Bonds shall cease to be such officer before the Series B Bonds so signed and sealed shall have been actually sold and delivered, such Series B Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series B Bonds had not ceased to hold such office. Any Series B Bond may be signed and sealed on behalf of the District by such person as at the actual time of the execution of such Series B Bonds shall hold the proper office on the Board, although at the date of such Series B Bond such person may not have held such office or may not have been so authorized.

The Series B Bonds may be sold at one time in their entirety or from time to time in installments as the Board may determine, without preference or priority as to any of the Series B Bonds on account of any such sale in installments.

The coupons to be attached to the Series B Bonds shall be authenticated with the facsimile signatures of the present or any future Chairman and Secretary, and the District may adopt and use for that purpose the facsimile signature of any person who shall have been such Chairman or Secretary at the time when the Series B Bonds shall be actually sold and delivered.

Section 2.04. Negotiability and Registration. The Series B coupon Bonds shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of West Virginia and shall pass by delivery except when registered. The Series B coupon Bonds may be registered as to principal only or converted into bonds registered as to both principal and interest in accordance with the provisions of the forms hereinafter provided.

Section 2.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series B Bond shall become mutilated or be destroyed, stolen or lost, the District may in its discretion issue and deliver a new Series B Bond with all unmatured coupons attached of like tenor as the Series B Bond and attached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series B Bond and attached coupons, if any, or in lieu of and substitution for the Series B Bond and attached coupons, if any, destroyed, stolen or lost, and upon the holder's furnishing the District proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the District may require. All Series B Bonds and coupons so surrendered shall be canceled and held for the account of the District. If any such Series B Bond or coupon shall have matured or be about to mature, instead of issuing a substitute Series B Bond or coupon, the District may pay the same, upon being indemnified as aforesaid, and, if such Series B Bond or coupon be destroyed, stolen or lost, without surrender thereof.

Any duplicate Series B Bonds and coupons issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the District, whether or not the destroyed, stolen or lost Series B Bonds or coupons be at any time found by anyone, and such duplicate Series B Bonds and coupons shall be entitled

to equal and proportionate benefits with all other Series B Bonds and coupons issued hereunder.

Section 2.06. Bonds Secured by Pledge of Revenues. The payment of the debt service of all the Series B Bonds shall be secured forthwith equally and ratably, and on a parity in all respects with the Series A Bonds, by a first lien on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for. The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series A and Series B Bonds, and to make the payments into the Bond Fund and otherwise as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series B Bonds as the same become due and on a parity with payments of principal of and interest on the Series A Bonds.

Section 2.07. Form of Series B Bonds and Coupons. Subject to the provisions of this Resolution, the text of the Series B Bonds, the provisions for registration to be endorsed thereon, the coupons, the single Series B Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted by this Resolution or any subsequent resolution adopted prior to the issuance thereof:

(Form of Coupon Bonds)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF CALHOUN  
MT. ZION PUBLIC SERVICE DISTRICT  
WATERWORKS REVENUE BOND  
SERIES B

No. B

\$500

MT. ZION PUBLIC SERVICE DISTRICT, in the County of Calhoun, State of West Virginia, a public corporation and political subdivision of the State of West Virginia (herein called the "District"), for value received, hereby promises to pay to the bearer, or, if this Bond be registered, to the registered holder as herein provided, on the first day of January, , from the revenues hereinafter mentioned, the principal sum of

FIVE HUNDRED DOLLARS

with interest thereon at the rate of \_\_\_\_\_ per centum ( %) per annum, payable on the first day of January of each year and unless this Bond be converted into a Bond registered as to both principal and interest, upon the presentation and surrender of the annexed coupons as they severally fall due. Both principal of and interest on this Bond are payable in lawful money of the United States of America at Calhoun County Bank, Grantsville, West Virginia, or, at the option of the holder at First National City Bank, New York, New York.

The Bonds of the issue of which this Bond is one may be redeemed prior to their stated maturities, without premium, at the option of the District as a whole, or in part in inverse numerical order, on any January 1 beginning January 1, 1985, as provided in the resolution hereinafter mentioned, subject to earlier redemption from moneys in the Project Construction Account or if held by the

Federal Government, all as provided in said resolution. Notice of any such redemption shall be published at least once not less than thirty nor more than sixty days prior to the redemption date in a financial newspaper published in the City of New York, New York. Interest shall cease upon this Bond after the date fixed for redemption if it shall be duly called for prior redemption and payment thereof duly provided for.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of Forty Thousand Dollars (\$40,000) of like date, tenor and effect, except as to number\* and date of maturity issued to finance the cost of the construction of extensions and improvements for the existing water system of the District under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A, Chapter 16 of the West Virginia Code (herein called the "Act") and other applicable statutes, and a resolution duly adopted by the Public Service Board of the District.

This Bond and the coupons appertaining hereto are payable solely from, and secured equally and ratably and in all respects on a parity with the Series A Bonds hereinafter mentioned, by a first lien on and pledge of the net revenues derived from the operation of said water system, with monthly payments from such revenues to be made into the Bond Fund for payment of the principal hereof and interest hereon, in the manner provided in said resolution, and do not and shall not in any event constitute an indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, and the District shall never be obligated to pay this Bond or the interest hereon except from the revenues of said water system, as provided in said resolution. The District covenants

\* add, "interest rate" if more than one rate

\* add, "date of issuance" if more than one date and delete "date" on preceding line

with the holders of the Bonds of the issue of which this Bond is one to establish and at all times maintain such rates and collect such charges for the services and facilities of said water system, and to revise the same from time to time, whenever necessary, as will always provide revenues in each fiscal year sufficient to make the required payments into the Bond Fund and the reserves and accounts as provided in said resolution and to pay all necessary expenses of operating and maintaining the said water system during such fiscal year, and the District has entered into certain other covenants with the holders of the Bonds of the issue of which this Bond is one, for the terms of which reference is made to said resolution.

The Bonds of the issue and series of which this Bond is one are on a parity with the Water Distribution System Revenue Bonds, Series A, of the District issued in the aggregate principal amount of \$85,000 on the 14th day of July, 1966 (herein called the "Series A Bonds") pursuant to a resolution of the District adopted on said 14th day of July, 1966 (herein called the "1966 Resolution"). Consent of the holders of all the Series A Bonds outstanding has been given for the issuance of the Series B Bonds, of which this Bond is one, on a parity with the Series A Bonds.

Additional Bonds on a parity with this Bond and the Bonds of the issue of which this Bond is one, as to lien and source of and security for payment, may be issued under the provisions and restrictions contained in the 1966 Resolution.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed in regular and due form, time and manner as required by the laws and Constitution of the State of West Virginia applicable thereto, and that the issuance of this Bond and of the issue of Bonds

of which this Bond is one is not in violation of any constitutional or statutory limitation of indebtedness.

This Bond, under the provisions of the Act, is, and has all the qualities and incidents of, a negotiable instrument.

This Bond and the interest hereon are exempt from taxation by the State of West Virginia and the other taxing bodies of said State.

IN WITNESS WHEREOF, Mt. Zion Public Service District has caused this Bond to be signed by the Chairman of its Public Service Board and its corporate seal to be affixed hereto and attested by the Secretary of said Board, and the annexed coupons to be executed with the facsimile signatures of said Chairman and said Secretary, all as of the \_\_\_\_ day of \_\_\_\_\_, 1973.

MT. ZION PUBLIC SERVICE DISTRICT

By \_\_\_\_\_  
Chairman of its Public  
Service Board

ATTEST:

(SEAL)

\_\_\_\_\_  
Secretary of its Public Service Board

(Form of Coupon)

\$

On the first day of January, 19 , unless the Bond to which this coupon was originally attached shall have been callable and duly called for prior redemption and payment of the redemption price duly made or provided for, Mt. Zion Public Service District, in Calhoun County, West Virginia, will pay to the bearer at Calhoun County Bank, Grantsville, West Virginia, or, at the option of the holder, at First National City Bank, New York, New York, solely from the revenues described in the Bond to which this coupon is attached, the sum shown hereon in lawful money of the United States of America, upon presentation and surrender of this coupon, being the interest then due on its Waterworks Revenue Bond, Series B, dated \_\_\_\_\_, 1973, No. B.

MT. ZION PUBLIC SERVICE DISTRICT

By (facsimile signature)  
Chairman, Public Service Board

ATTEST:

(facsimile signature)  
Secretary, Public Service Board

(CERTIFICATE OF CONVERSION)

It is hereby certified over my signature and the official seal of the issuing Public Service District that upon the presentation of the within bond with a written request by the holder thereof for its conversion into a bond registered as to both principal and interest, there have been this day cut off and destroyed \_\_\_\_\_ interest coupons attached thereto, of the amount and value of \_\_\_\_\_ each, being all the coupons for interest on the within Bond payable after the date of this certificate, and that the interest at the rate and on the dates stated in the within bond and as was provided by the coupons, as well as the principal, is to be paid to the registered holder hereof, his legal representatives, successors or transferees, at the place stated in the within bond and as was stated in the coupons. The principal of and interest on this Bond shall be payable only to the registered holder hereof named in the registration blank below, or his legal representative, and this Bond shall be transferable only on the books of the registrar kept in the office of the undersigned, and by an appropriate notation in such registration blank. When registered, the registrar shall treat the registered owner as the person exclusively entitled to payment of interest and the exercise of all other rights and powers of the owner prior to due presentment for registration of transfer.

Dated: \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Registrar

[SEAL OF PUBLIC SERVICE DISTRICT]

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Treasurer of Public Service District as Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Form of Single, Fully Registered Bond)

REVENUE BOND

MT. ZION PUBLIC SERVICE DISTRICT

Date: \_\_\_\_\_, 19\_\_

No. BR-1

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") at its office in Grantsville, West Virginia, or at such other place as the Government may hereafter designate in writing, the principal sum of Forty Thousand Dollars (\$40,000), plus interest on the unpaid principal balance at the rate of five percent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Interest only on January 1, 1975, and January 1, 1976, and \$2,371 annually thereafter on January 1, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower

agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions, extensions and improvements to the waterworks of the Borrower, is payable solely from the revenues to be derived from the operation of such waterworks after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the waterworks. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

The Bonds of the issue and series of which this Bond is one are on a parity with the Water Distribution System Revenue Bond, Series A, of the Borrower issued in the aggregate principal amount of \$85,000 on the 14th day of July, 1966 (herein called the "Series A Bonds") pursuant to a resolution of the Borrower adopted on said 14th day of July, 1966. Consent of the holders of all the Series A Bonds outstanding has been given for the issuance of the Series B Bonds, of which this Bond is one, on a parity with the Series A Bonds.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Administration Act of 1961. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

[CORPORATE SEAL]

MT. ZION PUBLIC SERVICE DISTRICT  
(Name of Borrower)

ATTEST:

(Signature of Executive Official)

Chairman, Public Service Board  
(Title of Executive Official)

(Signature of Attesting Official)

(Post Office Box No. or Street  
Address)

Secretary, Public Service  
Board  
(Title of Attesting  
Official)

Grantsville, West Virginia 26147  
(City, State and Zip Code)

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

TOTAL

Pay to the Order of \_\_\_\_\_  
\_\_\_\_\_

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

ARTICLE III

SERIES B BOND PROCEEDS; REVENUES  
AND APPLICATION THEREOF

Section 3.01. Series B Bond Proceeds; Project Construction Account. All moneys received from the sale of any or all the Series B Bonds shall be deposited on receipt by the District in Calhoun County Bank, Grantsville, West Virginia, a member of Federal Deposit Insurance Corporation (herein called "FDIC"), in a special account heretofore created and designated as "Mt. Zion Public Service District Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the District solely for the purposes provided in this Resolution.

Moneys received upon delivery of the Series B Bonds representing accrued interest will be immediately transferred to and deposited in the Bond Fund.

Until completion of construction of the Project, the District will transfer from the Project Construction Account and deposit in the Bond Fund, not later than fifteen days prior to the next interest payment date, such sums as shall be from time to time required to pay the interest becoming due on the Series B Bonds on such interest payment date if moneys in the Bond Fund are insufficient for such purpose.

If the District shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the District may invest such excess funds in direct obligations

of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which shall mature not later than eighteen months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Project Construction Account.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall first be used to refund promptly any overpayment made with respect to the aforesaid Federal grant, and any moneys then remaining in the Project Construction Account shall be promptly used to redeem or prepay the latest maturing Series B Bonds and any residue shall be deposited in the Bond Fund.

Section 3.02. Covenants of the District as to Revenues and Funds. So long as any of the Series B Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund and Reserve Account therein, hereinafter established, a sum sufficient to pay, when due or at the earliest practical redemption date, the entire principal of the Series B Bonds remaining unpaid together with interest accrued and to accrue thereon, the District further covenants with the holders of any and all Series B Bonds as follows:

(A) Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the District in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the "Mt. Zion Public Service District Revenue Fund" (herein called the "Revenue Fund") was established by the 1966 Resolution. The Revenue Fund is with said Calhoun County Bank. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct

from all other funds of the District and used only for the purposes and in the manner provided in this Resolution.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The District shall first each month set aside in the Operation and Maintenance Fund established by the 1966 Resolution and the bank named in subsection (A) above, such sum as the Board shall determine, in accordance with its budget, to be necessary for operating expenses.

(2) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit into the "Bond Fund", established by the 1966 Resolution and now with said bank, one-twelfth of the amount required to pay the interest becoming due on the Series A and B Bonds on the next interest payment date and one-twelfth of the amount of principal maturing on the next principal maturity date for the Series A and B Bonds.

The District shall also pay to the said bank, from time to time, such amounts as shall be required to pay the fiscal charges due to paying agents for paying the Bonds and the interest thereon.

(3) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit with the said bank in the Reserve Fund established by the 1966 Resolution, 20% of the amount deposited into the Bond Fund in such month until the amount in the Reserve Fund equals the sum of \$6,600. The term "minimum reserve" defined in the 1966 Resolution to mean the sum of \$4,500 is hereby redefined to mean the sum of \$6,600. The District may reduce each such monthly deposit by 1/60th of the amount on deposit in the Reserve Fund on the date of delivery of the Series B Bonds. After the minimum reserve, as above redefined, has been accumulated in

the Reserve Fund, the District shall monthly deposit in the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of maturing principal of and interest on the Series A and B Bonds and other payments or deposits required by the 1966 Resolution and this resolution, as shall be required to maintain the minimum reserve. Moneys in the Reserve Fund shall be used solely to make up any deficiency in the Bond Fund for payment of the principal of and interest on the Series A and B Bonds as the same shall mature on an equal pro rata basis and on a parity with each other or for prepayment of installments on fully registered Bonds, or for mandatory redemption of Bonds of all series as herein-after provided, and for no other purpose.

(4) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund established by the 1966 Resolution and now with said bank, including the amount required to be deposited into the Repair and Replacement Fund pursuant to the 1966 Resolution, not less than the sum of \$75 until there has been accumulated therein the aggregate sum of \$6,600 and thereafter, such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies in the Bond Fund for payment of principal of and interest on the Series A and B Bonds as the same mature, and next to restore to the Reserve Fund any sum or sums transferred therefrom to the Bond Fund. Thereafter, and provided that payments into the Bond Fund and the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Repair and Replacement Fund may be withdrawn by the District and used for repairs, replacements of equipment and improvements of the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining

therein and not permitted to be retained therein may be used to prepay installments of or to redeem Series A and B Bonds outstanding or for any lawful purpose.

Whenever the moneys in the Bond Fund and in the Reserve Fund therein shall be sufficient to purchase or redeem all Series A and B Bonds outstanding, it shall be the mandatory duty of the District, anything to the contrary in this Resolution notwithstanding, to direct the said bank to purchase or redeem all outstanding Series A and B Bonds at the earliest practical date and in accordance with applicable provisions hereof, any such purchase to be at a price or prices not exceeding the then market price of Bonds so purchased, but in no event exceeding the then redemption price of the respective series of Bonds.

The aforesaid bank (and any successor appointed by the District) is hereby designated as the Fiscal Agent for the administration of the Bond Fund and the Reserve Fund as herein provided, and all amounts required therefor will be deposited by the District upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Bondholders shall have a lien thereon for further securing payment of the Series A and B Bonds and the interest thereon. The moneys in excess of the sum insured by FDIC in any of such funds, shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to place the required amount in any of the funds or accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to those which would otherwise be required to be made into the funds or accounts on the subsequent payment dates.

The Fiscal Agent shall keep the moneys in the Bond Fund, the Reserve Fund and the Repair and Replacement Fund invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve has been accumulated and is maintained, shall be paid annually into the Revenue Fund by the Fiscal Agent.

(C) Change of Fiscal Agent. The District may designate another bank insured by FDIC as Fiscal Agent if the aforesaid bank should cease for any reason to serve or if the Board determines by resolution that said bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Board will cause notice of the change to be sent by registered or certified mail to the Government and to the original purchaser of any of the Series A or B Bonds, and shall cause such notice to be published one time in The Daily Bond Buyer or other financial journal published in the English language in the City of New York.

ARTICLE IV

GENERAL COVENANTS

Section 4.01. General Statement. So long as any of the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Bond Fund and the Reserve Fund therein a sum sufficient to pay when due, or redeem or purchase prior to maturity, the entire principal of the Bonds of Series A and B remaining unpaid, together with interest accrued and to accrue thereon and any applicable redemption premiums, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the District and the Bondholders.

Section 4.02. Rates. The District will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce net revenues equal to not less than 110% of the average annual debt service on all Series A and B Bonds outstanding and to make the payments required herein into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 4.03. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay all the Bonds and the interest thereon as herein provided. The proceeds from such sale, mortgage, lease or

other disposition of the System shall immediately be deposited in the Bond Fund and the District shall direct the Fiscal Agent to apply such proceeds to the payment of principal of and interest on the Series A and B Bonds at the redemption prices of the respective series or upon purchase at the then current market price not exceeding the par value thereof plus accrued interest to the date of purchase. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be paid to the District by the Fiscal Agent unless necessary for the payment of other obligations issued by the District and payable out of the revenues of the System.

The foregoing provision notwithstanding, the District shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof, provided that the net book value thereof does not exceed \$5,000. Prior to any such sale, lease or other disposition of said property, the general manager or other duly authorized officer in charge of the System shall make a finding in writing, concurred in by resolution of the Board, determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and such proceeds shall be deposited in the Repair and Replacement Fund.

Payments of such proceeds into the Repair and Replacement Fund shall not reduce the amounts required to be paid into the same by other provisions of this Resolution.

Section 4.04. Covenant Against Encumbrances. The District shall not issue any obligations whatsoever, except additional parity Bonds hereinafter provided for, payable from the revenues of the System which rank prior to or equally as to lien on and source of and security for payment from such revenues with the Series A and

B Bonds; and all obligations hereafter issued by the District payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues, and in all other respects, to the Series A and B Bonds.

The District shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge, having priority over or being on a parity with the lien of the Series A and B Bonds, and the interest thereon, upon any of the income and revenues of the System pledged as security therefor in this Resolution, or upon the System, or any part thereof.

Section 4.05. Issuance of Additional Parity Bonds. No additional parity Bonds, as in this Section defined, payable out of the revenues of the System, shall be issued except under the conditions and in the manner herein provided.

(A) No such additional parity Bonds shall be issued except for the purposes of financing the costs of the construction or acquisition of extensions, additions and improvements to the System or refunding Bonds of Series A or B on an equal pro rata basis, except as provided in subsection (G) of this Section.

(B) No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written certification by a certified public accountant not in the regular employ of the District, based upon the necessary investigation, reciting the conclusion that the net revenues, as defined herein and adjusted as provided below, actually derived from the System during the fiscal year immediately preceding the date of the issuance of such additional parity Bonds, shall have been not less than one hundred twenty per centum (120%) of the average

aggregate amount which will mature or become due in any succeeding fiscal year for principal of and interest on the Series A and B Bonds then outstanding, and on any additional parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then outstanding, and on the additional parity Bonds then proposed to be issued. This limitation may be waived or modified by the written consent of Bondholders representing 75% of the principal amount of each of the Series A and B Bonds then outstanding and of additional parity Bonds issued pursuant hereto.

(C) Prior to the issuance of any such additional parity Bonds, the District shall have entered into written contracts for the immediate acquisition or construction of such additions, extensions or improvements to the System which are to be financed by such additional parity Bonds.

(D) The term "additional parity Bonds", as used in this Section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this Section, payable from the revenues of the System on a parity with the Series A and B Bonds, and all the covenants and other provisions of this Resolution (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the holders of the Series A and B Bonds and of any additional parity Bonds subsequently issued within the limitations of and in compliance with this Section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System, and their source of and security for payment from said revenues, without preference of any Bond or coupon over any other. The District shall comply fully with all the increased payments into the various funds created in this Resolution required for such additional parity Bonds, in addition to the payments required for the Series A and B Bonds as herein provided. Redemption of Bonds prior to

maturity shall as nearly as practical be on an equal pro rata basis reflecting the original amounts of each issue.

(E) All additional parity Bonds issued pursuant to this Section shall mature on January 1 of each year of maturity, and the interest thereon shall be payable January 1 of each year.

(F) No additional parity Bonds shall be issued at any time unless all the payments into the respective Funds provided for in this Resolution on Bonds then outstanding and all other payments provided for in this Resolution shall have been made or paid up as required to the date of issuance of the additional parity Bonds and the District shall have fully complied with all the covenants, agreements and terms of this Resolution or shall have remedied any deficiency in such compliance.

(G) With the written consent in advance of the original purchaser of the Bonds originally authorized by this Resolution and anything to the contrary in subsections (A), (B) and (C) of this Section notwithstanding, additional parity Bonds may be authorized and issued by the District pursuant to supplemental resolution in the event that the Bonds hereby originally authorized and issued should be insufficient, together with other funds lawfully available therefor, to pay all costs of construction of the Project. Any such additional parity Bonds authorized and issued under the provisions of this subsection shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of such construction costs, and the maturities of any such additional parity Bonds shall be in years and amounts suggested by said original purchaser.

Section 4.06. Insurance and Bonds. The District hereby covenants and agrees that so long as any of the Bonds remain outstanding, it will, as an expense of operation and maintenance of the System, procure, carry and maintain insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured before issuance of any of the Series B Bonds, on all insurable portions of the System in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the District will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The District will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the District during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$100,000 for one person and \$300,000 for more than one person injured or killed in one accident to protect the District from claims for bodily injury and/or death, and not less than \$100,000 from claims for damage to property of others which may arise from the operation of the System, such insurance to be in effect prior to issuance of any of the Series B Bonds.

(c) Vehicular Public Liability Insurance, in the event the District owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the District is operated for the benefit of the District, with limits of not less than \$100,000 for one person and \$300,000 for more than one person injured or killed in one accident to protect the District from claims for bodily injury and/or death, and not less than \$100,000 from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle.

(d) Workmen's Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract,

will be required of each contractor or subcontractor, and such payment bonds will be filed with the Clerk of the County Court of said County prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(e) Fidelity Bonds will be provided as to every member of the Board and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the District in an amount at least equal to the total funds in the custody of any such person at any one time.

(f) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Government holds any of the Bonds, the District will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the District and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Government may specify, with insurance carriers or bonding companies acceptable to the Government.

Section 4.07. Statutory Mortgage. For the further protection of the holders of the Bonds and the coupons appertaining thereto, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding.

Section 4.08. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of the principal, and, if any premium be due, of such premium, of any of the Bonds either at the date therein specified for their payment or by proceedings for redemption or otherwise;

(B) Failure to make payment of any installment of interest due on any of the Bonds on the date specified for the payment of such interest;

(C) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the District in the Bonds or in this Resolution, or violation of or failure to observe any provision of any pertinent law, provided any such failure or violation, excluding those covered in (A) and (B) above in this Section, shall continue for a period of thirty days after written notice shall have been given to the District by the holder of any Series A or B Bond, specifying such failure or violation and requiring the same to be remedied.

Section 4.09. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, any Bondholder may proceed to protect and enforce the rights of the Bondholders by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by such Bondholder, such court may, upon proof of such default, appoint a receiver for the affairs of the District and the System. The receiver so appointed shall administer the System on behalf of the District, shall exercise all the rights and powers of the District with respect to its System and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.10. No Priority Between Bonds. The Series A and B Bonds shall not be entitled to priority one over the other in the application of the revenues of the System or with respect to the security for their payment, regardless of the time or times

of their issuance, it being the intention that there shall be no priority among the Bonds of Series A or B or within any such series, regardless of the fact that they may be actually issued and delivered at different times.

Section 4.11. Fiscal Year; Budget. While any Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than forty-five days prior to the beginning of each fiscal year, the District agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Board. Copies of each Annual Budget shall be mailed to the Government, to the original purchaser of the Bonds and to those Bondholders who shall have filed their names and addresses with the Secretary of the Board for such purpose.

If for any reason the District shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the District. Each such Budget of Current Expenses shall be mailed immediately as in the case of the Annual Budget.

Section 4.12. Compensation of Board Members. The District hereby covenants and agrees that no compensation for policy direction

shall be paid to the members of its Board in excess of the amount permitted by the Act. Payment of any compensation to any member of the Board for policy direction shall not be made if such payment would cause the Net Operating Income to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision of this Resolution.

Section 4.13. Covenant to Proceed. The District hereby covenants to proceed as promptly as possible with the construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary of the Board on the date of adoption of this Resolution.

Section 4.14. Books and Records. The District will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the District, in which complete and correct entries shall be made of all transactions relating to the System, and any holder of a Bond or Bonds, his agents and representatives, shall have the right at all reasonable times to inspect the System and all records, accounts and data of the District relating thereto.

The District shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants, shall mail a copy of such audit report to the Government and the original purchaser of the Bonds, and shall make available the report of said accountants at all reasonable times to any holder or holders of the Bonds, or any customer receiving services from the System, or anyone acting for and in behalf of such Bondholder, Bondholders or customer.

Section 4.15. Maintenance of System. The District covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as any of the Bonds are outstanding.

Section 4.16. Concerning Arbitrage. It is not reasonably expected that the proceeds of sale of the Series B Bonds will be invested in such a way as to violate the operating rules in the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the arbitrage provisions of Section 103(d) of the Internal Revenue Code of 1954, as amended. The Fiscal Agent is hereby expressly instructed not to violate such rules in investing such proceeds.

ARTICLE V

RATES, ETC.

Section 5.01. Initial Schedule of Rates and Charges; Rules.

A. The schedule of rates and charges for the services and facilities of the System, heretofore approved by the Public Service Commission of West Virginia, shall be as follows:

AVAILABILITY OF SERVICE

Available for all domestic, commercial and industrial consumers within the District's service area.

RATE

First	3,000 gallons used per month - \$2.666 per thousand gallons
Next	7,000 gallons used per month - 2.00 per thousand gallons
All over	10,000 gallons used per month - 1.50 per thousand gallons

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

5/8 inch meter - \$ 7.00 per month

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within 10 days after date of bill, five per cent (5%) will be added to the net amount shown.

RECONNECTION CHARGE

A reconnection charge of Five Dollars (\$5.00) shall be made for restoring service.

NEW SERVICE

The charge for new service will be One Hundred Dollars (\$100.00).

B. There shall not be any discrimination or differential in rates between customers in similar circumstances:

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises

of state, county, school and municipal taxes, as provided in the Act. When such fees, rates and charges have been delinquent for thirty days, the District shall have power forthwith to foreclose the lien on the premises served in the same manner provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property, as provided in the Act.

D. The District will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the District or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

E. The District may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. No allowance or adjustment in any bill for use of the service and facilities of the System shall be made for any leakage occurring on the customer's side of any water meter.

G. The District shall not be liable to any customer for any damage resulting from bursting or breakage of any line, main, pipe, valve, equipment or part or from discontinuance of the operation of any part of the System or from failure of any part thereof for any cause whatsoever.

H. In case of emergency, the District shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the District.

I. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions of this Resolution and the District shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide net revenues to meet its obligations hereunder, but not less than 110% of the average annual debt service on all Bonds outstanding.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Bonds, the District shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter, shall file such a Financing Statement in the offices of the Secretary of State of the State of West Virginia and of the Clerk of the County Court of said County.

Section 6.02. Modification or Amendment. No material modification or amendment of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the holders of two-thirds or more in principal amount of the Bonds then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of any of the Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation, or affecting the unconditional promise of the District to pay the principal of and interest on the Bonds as the same shall become due from the revenues of the System, without the consent of the holders of such Bonds. Notwithstanding the above, no amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications and for consent of 75% of the holders of each series of Bonds outstanding to waiver or modification of the limitation upon issuance of additional parity Bonds contained in Section 4.05B.

Section 6.03. Delivery of Bond No. BR-1. The Chairman, Secretary and Treasurer of the Board are hereby authorized and directed to cause Bond No. BR-1, hereby awarded to the Government pursuant to agreement, to be delivered to the Government as soon as the Government will accept such delivery and pay for Bond No. BR-1.

Section 6.04. Refunding of Bonds Permitted. The District reserves the right, subject to applicable provisions of law, to refund the Bonds when in its judgment it would be to the best interests of the District and of its inhabitants so to do. Upon payment of all the Bonds outstanding, prior to or simultaneously with the issuance of any refunding bonds or of an issue of bonds for the purposes of refunding the Bonds then outstanding and providing funds for additions, extensions and improvements to the System, or upon provision for such payment by deposit irrevocably in trust, with the Fiscal Agent, of a sum equal to the principal amount of all the Bonds outstanding, plus an amount equal to all interest accrued and to accrue to the date of payment or redemption of such Bonds, and plus an amount sufficient to pay all applicable redemption premiums on the earliest practicable redemption date, the security, pledge and any lien applicable to the Bonds then outstanding shall immediately cease and determine. The sum so deposited in trust shall be used solely to pay at the earliest practical redemption date the principal amount of the Bonds and all interest thereon to the date of redemption and any applicable redemption premiums, or to purchase Bonds at not to exceed the par value of the Bonds plus interest accrued to date of purchase. The moneys so deposited shall be invested by the Fiscal Agent in direct obligations of the United States of America or obligations the payment of the principal of and interest on which is guaranteed by the United States of America, having maturities not later than the dates on which the moneys shall be required to be used for such redemption.

Section 6.05. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants,

agreements or provisions, and shall in no way affect the validity of all the other provisions of this Resolution or the Bonds or coupons appertaining thereto.

Section 6.06. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflicts, hereby repealed, including expressly the 1966 Resolution to the extent of any such conflicts, but expressly excluding the Series A Bond as issued.

Section 6.07. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 6.08. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted January 10, 1974.

Glendon M. Lee  
Chairman of Public Service Board

Mildred Kerby  
Member

Sam Poling  
Member



MT. ZION PUBLIC SERVICE DISTRICT

Water Revenue Bond, Series 1984

BOND RESOLUTION

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02/01/84  
ZION1-B

MT. ZION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$161,000 WATER REVENUE BOND, SERIES 1984, OF MT. ZION PUBLIC SERVICE DISTRICT ON A PARITY WITH THE 1966 AND 1974 BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF AN EXTENSION TO THE WATERWORKS SYSTEM OF THE DISTRICT; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDER OF THE BOND; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for This Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code (the "Act") and other applicable provisions of law. Mt. Zion Public Service District (the "Issuer") is a public service district created pursuant to the Act by The County Commission of Calhoun County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer now has a public waterworks system and desires to acquire and construct an extension to said system, within the boundaries of the Issuer to be owned and operated by the Issuer. The acquisition and construction of such an extension to the existing waterworks facilities is herein called the "Project."

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be constructed and acquired the Project consisting of water mains and transmission lines with all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer

and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. Water will be purchased from the Town of Grantsville pursuant to a Water Purchase Agreement between the Issuer and said Town of Grantsville. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. It is necessary for the Issuer to issue its revenue bond in the principal amount of \$161,000 to finance a portion of the cost of such acquisition and construction in the manner hereinafter provided.

D. The estimated maximum cost of the acquisition and construction of the Project is \$1,101,500 of which \$161,000 will be obtained from the proceeds of sale of the Bond herein authorized, and \$161,000 from a grant by the Purchaser and \$779,500 in grants from the Department of Housing and Urban Development and the State of West Virginia.

E. The cost of such construction shall be deemed to include, without being limited to, the construction and acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond prior to, during and for six months after completion of such construction to the extent that revenues of the System (hereinafter defined) are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the acquisition and construction of the Project and the financing authorized hereby.

F. The period of usefulness of the System after completion of the Project is not less than forty years.

G. There are outstanding the obligations of the Issuer which will rank on a parity with the Bond as to lien and source of and security for payment as follows:

Water Distribution System Revenue Bond, Series A, of the Issuer dated July 16, 1966 (the "1966 Bond"), issued in the original principal amount of \$85,600, held or insured by the Purchaser.

Waterworks Revenue Bonds, Series B, of the Issuer, dated January 10, 1974 (the "1974 Bond"), issued in the original aggregate

principal amount of \$40,000, held by the Purchaser.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bond, or will have so complied prior to issuance of the Bond including, among other things, the consent and approval, pursuant to the Act, of the issuance of the Bond by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Bond" means the Water Revenue Bond, Series 1984, authorized hereby.

"Bonds" means the Bond, the 1966 Bond and the 1974 Bond.

"Bond Legislation" means this Resolution and all resolutions supplemental hereto and amendatory hereof.

"1966 Bond" means the outstanding Water Distribution System Revenue Bond, Series A, of the Issuer described in Section 1.02 G hereof.

"1974 Bond" means the outstanding Waterworks Revenue Bonds, Series B, of the Issuer described in Section 1.02 G hereof.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Milam/BCM Engineering, Inc., Dunbar, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Herein" means in this Bond Legislation.

"Holder of the Bond," "Bondholder" or any similar term means any person who shall be the registered owner of the Bond.

"Issuer" means Mt. Zion Public Service District, in Calhoun County, West Virginia, and includes the Governing Body.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the Bonds and into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund have been made to the last monthly payment date prior to such retention.

"Project" shall have the meaning stated in Section 1.02 B above.

"Purchaser" means United States Department of Agriculture, Farmers Home Administration, and any successor thereof.

"Registrar" means the Issuer, which shall usually so act by its Secretary.

"Resolutions" means collectively the 1966 Resolution, the 1974 Resolution and the Bond Legislation.

"1966 Resolution" means the resolution of the Issuer adopted July 14, 1966, authorizing the 1966 Bond.

"1974 Resolution" means the resolution for the Issuer adopted January 10, 1974, authorizing the 1974 Bond.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"System" means the existing waterworks of the Issuer as enlarged and expanded by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system of the Issuer.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION,  
REGISTRATION AND ISSUE OF BOND

Section 2.01. Authorization of Bond. Subject and pursuant to the provisions of this Resolution, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1984," is hereby authorized to be issued in the aggregate principal amount of not exceeding One Hundred Sixty-one Thousand Dollars (\$161,000) for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 2.02. Description of Bond. The Bond shall be issued in single form, No. R-1, only as a fully registered Bond, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 2.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Bond shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Bond may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 2.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any instalment payment date on the Bond.

Section 2.04. Registrar. The Registrar will keep or cause to be kept at its office, sufficient books for the registration and transfer of the Bond, and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such books, the transfer of the Bond as hereinbefore provided.

The Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust, and the federal employer identification number and date of each trust and the name of the trustee of each trust.

Section 2.05. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary.

Section 2.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 2.07. Bond Secured by Pledge of Revenues. The payment of the debt service of the Bond shall be secured forthwith by a first lien on the Net Revenues derived from the System on a parity with the 1966 and 1974 Bonds in addition to the statutory mortgage lien on the System hereinafter provided for as to the Bonds. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 2.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be

of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(Form of Bond)

WATER REVENUE BOND, SERIES 1984

MT. ZION PUBLIC SERVICE DISTRICT

\$161,000

No. R-1

Date: \_\_\_\_\_

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of ONE HUNDRED SIXTY-ONE THOUSAND DOLLARS (\$161,000) plus interest on the unpaid principal balance at the rate of five percent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day of each month following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four months after the date hereof and \$791, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved,

shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of improvements for the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and

maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney, duly authorized in writing, at the office of the Registrar as defined in the Resolution hereinafter described, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in said Resolution, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code and a Resolution of the Borrower.

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.



RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	\$		(6)	\$	
(2)	\$		(7)	\$	
(3)	\$		(8)	\$	
(4)	\$		(9)	\$	
(5)	\$		(10)	\$	
TOTAL				\$	

ASSIGNMENT

Pay to the Order of \_\_\_\_\_  
\_\_\_\_\_

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By \_\_\_\_\_  
\_\_\_\_\_  
(Title)

(No writing on this Bond except by the Issuer as Registrar)

Date of Registration	In Whose Name Registered	Signature of Secretary of Registrar
_____	_____	_____
_____	_____	_____
_____	_____	_____

### ARTICLE III

#### BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 3.01. Bond Proceeds; Project Construction Account. The proceeds of sale of the Bond shall be deposited on receipt by the Issuer in The Calhoun County Bank, Grantsville, West Virginia, a member of Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby created and designated as "Mt. Zion Public Service District Project Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

Moneys in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by Purchaser.

If the Issuer shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the Issuer may invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America ("Government Obligations"), which shall mature not later than eighteen months after the date of such investment, or in investments secured by a pledge of Government Obligations. All such investments and the income therefrom shall be carried to the credit of the Project Construction Account.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 3.02. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund hereinafter described, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the Bond as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the "Mt. Zion Public Service District Revenue Fund" (herein call the "Revenue Fund") was established by the 1966 Resolution and is hereby continued. The Revenue Fund is now on deposit with the bank named in Section 3.01. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolutions and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided in the Resolutions.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first, each month, set aside in the Operation and Maintenance Fund established by the 1966 Resolution and hereby continued within the Bank named in Section 3.01 hereof, such sum as the Governing Body shall determine, in accordance with its budget, to be necessary for Operating Expenses.

(2) The Issuer shall next, on or before the due date of payment of each installment on the Bonds, transfer from the Revenue Fund and pay to the National Finance Office designated in the Bond or otherwise the amount required to pay the interest on the Bond, and to amortize the principal of the Bond over the life of the Bond issue, and shall transfer from the Revenue Fund and deposit into the "Bond Fund", established by the 1966 Resolution and now with said Bank, one-twelfth of the amount required to pay the interest becoming due on the Series A and B Bonds on the next interest payment date and one-twelfth of the amount of principal maturing on the next principal maturity date for the Series A and B Bonds.

The District shall also pay to the said Bank, from time to time, such amounts as shall be required to

pay the fiscal charges due to paying agents for paying the Bonds and the interest thereon.

(3) The Issuer shall next, by the 15th day of each month, transfer from the Revenue Fund and deposit with the said Bank in the Reserve Fund established by the 1966 Resolution and hereby continued, 20% of the amount deposited into the Bond Fund in such month, and 1/12th of 1/10th of the amount of principal and interest becoming due on the Bond in any year, until the amount in the Reserve Fund equals the sum of \$16,100, such sum being herein called the "Minimum Reserve." The term "minimum reserve" defined in the 1974 Resolution to mean \$6,600 is hereby redefined to mean the sum of \$16,100. After the Minimum Reserve has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of maturing principal of and interest on the 1966 and 1974 Bonds and other payments or deposits required by the 1966 and 1974 Resolutions, and after provision for payment of monthly installments on the Bond and payment of operating expenses of the System, as shall be required to maintain the Minimum Reserve in the Reserve Fund. Moneys in the Reserve Fund shall be used solely to make up any deficiency in the Bond Fund for payment of the principal of and interest on the 1966 and 1974 Bonds as the same mature and for payment of monthly payments of the principal of and interest on the Bond to said National Finance Office as the same shall become due, on an equal pro rata basis and on a parity with each other, or for prepayment of installments on the Bonds, or for mandatory prepayment of the Bonds as hereinafter provided, and for no other purpose; provided, however, that when the Minimum Reserve has been accumulated in the Reserve Fund all earnings of investments of moneys therein shall at least annually be transferred to and deposited in the Revenue Fund and used for ratable prepayment of principal of the Bonds.

(4) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund, established by the 1966 Resolution with said Bank and hereby continued, the moneys remaining in the Revenue Fund and not permitted to be retained therein, including the amount required to be deposited into the Repair and Replacement Fund pursuant to the 1966 and 1974 Resolutions, which sum shall not be less than \$75, until there has been accumulated in the Repair and Replacement Fund the aggregate sum of \$61,700, and

thereafter such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies in the Bond Fund and for payment of principal of and interest on the 1966 and 1974 Bonds, as the same mature, and for monthly payments of principal of and interest on the Bond as the same become due, and next to restore to the Reserve Fund any sum or sums transferred to the Bond Fund or otherwise. Thereafter, and provided that payments into the Bond Fund and Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Repair and Replacement Fund may be withdrawn by the Issuer and used for repairs and for replacements of equipment and improvements for the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not permitted to be retained therein may be used to prepay installments of or to redeem the 1966 and 1974 Bonds outstanding, and to prepay portions of the principal amounts of the Bonds, ratably, or for any lawful purpose.

Whenever the moneys in the Bond Fund and the Reserve Fund shall be sufficient to purchase or redeem the Bonds outstanding in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to direct said Bank to purchase or redeem the Bonds at the earliest practical date and in accordance with applicable provisions hereof, any such purchase to be at a price or prices not exceeding the then market price of the Bonds so purchased, but in no event exceeding the redemption price of the respective series of Bonds.

The aforesaid Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Bond Fund, the Reserve Fund and the Repair and Replacement Fund as herein provided, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bonds and the interest thereon,

but the aforesaid Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Fiscal Agent shall keep the moneys in the Bond Fund, the Reserve Fund and the Repair and Replacement Fund invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Fiscal Agent.

C. CHANGE OF FISCAL AGENT. The Issuer may designate another bank insured by FDIC as Fiscal Agent if the aforesaid Bank should cease for any reason to serve or if the Governing Body determines by resolution that said Bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser and to the original purchaser of any of the Bonds, and shall cause such notice to be published one time in The Daily Bond Buyer or other financial journal published in the English language in the City of New York.

D. USER CONTRACTS. The Issuer, prior to delivery of the Bond, shall obtain signed user agreements from at least 112 bona fide full time users initially to be served by the Project and deposit in the Project Construction Account not less than \$5,600, based on a tap fee of \$50.

## ARTICLE IV

### GENERAL COVENANTS

Section 4.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 4.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds and sufficient to make the payments required herein into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 4.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 4.04. Issuance of Additional Parity Bonds. No additional parity bonds payable out of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser.

Section 4.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on

all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workmen's Compensation Coverage for All Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said

County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount of \$10,000 upon the treasurer, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser, or in such amounts as are required by the Purchaser.

(f) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 4.06. Statutory Mortgage. For the further protection of the Purchaser, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Bond and shall be for the equal benefit of the Bonds.

Section 4.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) Failure to make payment of any monthly amortization installment upon the Bond at the date specified for payment thereof; and

(b) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained

in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 4.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than ten per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 4.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 4.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 4.12. Books and Records, Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser.

Section 4.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 4.14. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 4.15. Concerning Arbitrage. The proceeds of sale of the Bond will not be invested in such a way as to violate the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the

arbitrage provisions of Section 103(c) of the Internal Revenue Code  
of 1954, as amended.

ARTICLE V

RATES, ETC.

Section 5.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as established by the Governing Body and as set forth in the Final Order of the Public Service Commission of West Virginia, entered on November 30, 1983, in Case No. 83-651-W-30-B, which Final Order is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. When such fees, rates and charges have been delinquent for thirty days, the Issuer shall have power pursuant to the Act forthwith to foreclose the lien on the premises served in the same manner provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without prior written consent of the Purchaser.

Section 6.02. Delivery of Bond No. R-1. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause Bond No. R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 6.03. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 6.04. 1966 and 1974 Resolutions; Conflicting Provisions Repealed. The 1966 and 1974 Resolutions and all parts thereof not expressly hereby changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the 1966 and 1974 Bond Resolutions.

All other resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 6.05. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 6.06. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted:

2/2-84

Edward McFowin  
Chairman of Public Service Board

Kilma L. Mace  
Member

Billie Jean Shaffer  
Member

02/01/84  
ZION1-A



\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1998

BOND RESOLUTION

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RESOLUTION OF MT. ZION PUBLIC SERVICE DISTRICT

"RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SERVICE PROPERTIES AND ISSUANCE OF WATER REVENUE BOND, SERIES 1998, OF THE MT. ZION PUBLIC SERVICE DISTRICT, IN THE AMOUNT OF \$40,000, TO FINANCE A PORTION OF THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO A PUBLIC WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING FOR INTERIM CONSTRUCTION FINANCING; PLACING LIMIT ON SALE OF SYSTEM; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BOND; PROVIDING STATUTORY LIEN ON REVENUES AND SYSTEM; PROVIDING FOR THE ADOPTION, RATIFICATION, APPROVAL AND COLLECTION OF RATES AND CHARGES FOR THE PUBLIC WATER SYSTEM; AND PROVIDING GENERAL TERMS AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT"

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT, MILLSTONE, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the Code of West Virginia of 1931, as amended (the "Act") and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. Mt. Zion Public Service District (the "Issuer") is a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, located in Calhoun County, West Virginia.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain improvements, expenditures and betterments to the existing public water system of the Issuer by an upgrade of the existing facilities (sometimes referred to herein as the "System") with all necessary appurtenant facilities (the "Project"), and generally described as the construction of approximately 11,000 linear feet of eight-inch (8") waterline, a one hundred thousand (100,000) gallon storage tank, and necessary appurtenances for a complete functional system, as more

particularly described in and according to the plans and specifications prepared by the Consulting Engineer (the "Plans") and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. It is necessary for the Issuer to issue its revenue bonds in the aggregate principal amount of \$40,000 to finance a portion of the cost of such construction in the manner hereinafter provided.

D. The estimated maximum cost of the construction of the Project is \$470,000, of which \$40,000 will be obtained from the proceeds of sale of the Series 1998 Bond herein authorized, \$260,800 from a RUS Grant and \$169,200 from a West Virginia Infrastructure and Jobs Development Council Grant.

E. The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized hereby.

F. The period of usefulness of the System after completion of the Project is not less than forty (40) years.

G. There are no other outstanding bonds or obligations of the Issuer which will rank prior to or on a parity with the Bond as to lien, pledge and/or source of and security for payment except for the Issuer's Water Distribution System Revenue Bond, Series A (1966), Waterworks Revenue Bonds, Series B (1974), and Water Revenue Bond, Series 1984, which will be on a parity as to lien, pledge and source of and security for payment with the Bonds.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bond, or will have so complied prior to issuance of the Bond including, among other things, the imposition of rates and charges, the consent and approval, pursuant to the Act, of the issuance of the Bond by the Public Service Commission of West Virginia by final order, in Case No. 97-0175-PWD-CN, which became a Final Order of the Public Service Commission on May 4, 1998.

I. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Bond (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein.

J. It is in the best interests of the Issuer that the Bond be sold to the United States Department of Agriculture, Rural Utilities Service, successor in interest to the Farmers Home Administration (the "Purchaser" or "RUS"), pursuant to the terms and provisions of a Letter of Conditions dated February 4, 1997, and all amendments thereto (the "Letter of Conditions").

K. The Issuer has also made arrangements for interim financing as requested by RUS and deems it to be in the best interests of the Issuer to enter into a Credit Agreement and execute a note or notes in the initial amount of \$40,000 payable to any interim construction or financing lender which lender is initially Calhoun County Bank.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser, this Resolution (the "Resolution") shall be deemed to be and shall constitute a contract between the Issuer and the Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Bond" or "Bonds" means the \$40,000 Water Revenue Bond, Series 1998, authorized hereby to be issued.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Boyles and Hildreth Consulting Engineers, Spencer, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02 hereof to be a part of the cost of acquisition and construction of the Project.

"Depository Bank" means initially the Calhoun County Bank, Grantsville, West Virginia, a state banking corporation and a member of FDIC, and its successors and assigns or such other qualified bank or trust company designated now or hereafter by

Issuer.

"Facilities" or "Water facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the water system by addition, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

"Herein" means in this Resolution.

"Holder of the Bond" or any similar term means any person who shall be the registered owner of the Bond.

"Issuer" means Mt. Zion Public Service District, Millstone, West Virginia, and, where appropriate, also means the Governing Body.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Project" shall have the meaning stated in Section 1.02 B. above.

"Purchaser" or "Government" means the United States of America, United States Department of Agriculture, acting through Rural Utilities Service, formerly known as the Farmers Home Administration, and any successor thereof.

"Qualified Investments" means and include any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidence of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government-bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such

repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registrar" or "Bond Registrar" means the Issuer which usually shall act by its Secretary.

"Resolution" means this Resolution and all resolutions supplemental hereto.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with generally accepted accounting principles.

"Rural Utilities Service" or "RUS" shall mean United States of America, United States Department of Agriculture, Rural Utilities Service, formerly known as the Farmers Home Administration, with a state mailing address of Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500, or such other address as the Purchaser designates to Issuer.

"Secretary" means the Secretary of the Governing Body.

"State" means the State of West Virginia.

"System" means the Project initially, and includes the complete water system of the Issuer, and all water facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the Issuer's water system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for said water system after completion of the Project.

"Tap Fees" means the fees, if any, paid by prospective customers of the system in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations; words importing the masculine, feminine or neuter genders shall include any other gender; and any requirement for execution, sealing and/or attestation of the Bond or any certificate or other document by the Secretary shall mean that such Bond, certificate or other document may be executed, sealed and/or attested by an Acting Secretary.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$470,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUANCE OF BOND

Section 3.01. Authorization of Bond. Subject and pursuant to the provisions hereof, the Bond of the Issuer to be known as "Mt. Zion Water Revenue Bond, Series 1998" in the principal amount of \$40,000 is hereby authorized to be issued for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 3.02. Description of Bond. The Bond shall be issued in single registered form No. R-1, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of four and 50/100 percent (4.5%) per annum or such lower rate that the Purchaser will make available at closing, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer and shall be payable as provided in the Bond form hereinafter set forth.

The initial address of the Purchaser for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500.

Section 3.03. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary, and the

Chairman and the Secretary are hereby authorized to execute the Bond and such other documents as are necessary to finalize this transaction. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary, and the Chairman and the Secretary are hereby authorized to execute the Bond and such other documents as are necessary to finalize this transaction. In case any one or more of the officers who shall have signed or sealed the Bond shall cease to be such officer of the Issuer before the Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office.

Section 3.04. Negotiability, Registration, Transfer and Exchange of Bond. The Bond shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, but the Bond may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.05 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar. No interest in the Bond shall be transferable except by means of transfer of registration of a Bond representing such interest and delivery of a new Bond or Bonds in exchange thereof in accordance with this Resolution.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the Bondholder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Bond.

Section 3.05. Registrar. The Issuer will keep or cause to be kept at its office sufficient books for the registration and transfer of the Bond, and upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bond as hereinbefore provided.

The Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a

partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or social security numbers of the settlor and beneficiaries of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, and if such Bond be destroyed, stolen or lost, the Issuer may pay the same without surrender thereof.

Section 3.07. Bond Secured by Pledge of and Lien on Revenues. The payment of the debt service of the Bond shall be secured forthwith by a parity lien on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for on a parity with the Issuer's Water Distribution System Revenue Bond, Series A(1966), Waterworks Revenue Bonds, Series B(1974), and Water Revenue Bonds, Series 1984 (collectively, the "Prior Bonds"). The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond and the Prior Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 1998

No. R-1

Date: May \_\_, 1998

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT, a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, in Calhoun County of said State (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at the Government's National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Forty Thousand Dollars (\$40,000), plus interest on the unpaid principal balance at the rate of four and 50/100 percent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month, for the first twenty-four (24) months after the date hereof, and \$184.00 per month covering principal and interest thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided herein. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a Water system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined

Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the Code of West Virginia, as amended (herein called the "Act"),

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATER DISTRIBUTION SYSTEM REVENUE BOND, SERIES A(1966), WATERWORKS REVENUE BONDS, SERIES B(1974), AND WATER REVENUE BONDS, SERIES 1984.

The address of Government for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500.

This Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

By: \_\_\_\_\_

Chairman  
P.O. Box 122  
Grantsville, WV 26147

ATTEST

By: \_\_\_\_\_  
Secretary

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
		TOTAL	
\$ _____			

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney, to transfer said Bond on the books kept for registration of the within Bond of said Borrower with full power of substitution in the premises.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

## ARTICLE IV

### INTERIM CONSTRUCTION FINANCING

Section 4.01. Authorization and General Terms. In order to pay certain costs of the Project pending receipt of the gross proceeds of the Bond, the Issuer may issue and sell its Note or Notes (the "Notes"), in an aggregate principal amount not to exceed \$40,000. The Notes may be issued as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such date or dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the supplemental resolution.

Section 4.02. Terms of and Security for Notes. The Notes, if issued, shall be issued with such terms and secured in the manner set forth in a supplemental resolution.

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the proceeds of the Bond, grant proceeds, surplus revenues, letter of credit proceeds, if any, and other sources. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the supplemental resolution.

Section 4.04. Execution of Documents. The Notes, Credit Agreement and any other documents required to be executed by the commercial bank or other lender shall be executed in the name of the Issuer by the Chairman, and the Chairman and Secretary are hereby authorized to execute any Note, Notes, Credit Agreement or any other documents necessary to secure the interim financing.

## ARTICLE V

### REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created and established with and shall be held by the Depository Bank, separate, distinct and apart from all other funds or accounts

of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Project Construction Account;
- (3) Reserve Fund; and
- (4) Sinking Fund.

Section 5.02. Bond Proceeds; Project Construction Account. All moneys received from the sale of the Bond shall be deposited upon receipt by the Issuer in the Depository Bank, a member of the Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby now established and designated as "\$40,000 Mt. Zion Public Service District Water System Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under State law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of the construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

If the Issuer shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing ninety (90) days, the Issuer may invest such excess funds in Qualified Investments.

Pending application as provided in this Section 5.02. money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 5.03. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund hereinafter established a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the

Bond remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the Bond as follows:

(A) Revenue Fund. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State which is a member of the FDIC, which Fund, known as the "Revenue Fund" is established with the Depository Bank. The Revenue Fund shall constitute a trust fund for the purposes provided herein and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided herein.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(i) The Issuer shall first each month pay from the moneys in the Revenue Fund all current Operating Expenses.

(ii) The Issuer shall next, each month, on or before the due date of payment of each installment on the Bonds, transfer moneys from the Revenue Fund and remit to the National Finance Office designated in the Bonds (or such other place as may be provided pursuant to the Bonds), the amount required to pay interest on the Bonds, and to amortize the principal of the Bonds over the respective lives of each Bond issue. All payments with respect to principal of and interest on the Bonds shall be made in accordance with the aggregate principal amount thereof outstanding. There is hereby created a sinking fund at the Depository Bank into which the Issuer shall deposit sufficient amounts from the Revenue Fund to pay the interest on the Bonds and to amortize the principal of the Bonds over the remaining life of the Bond issue. As long as the Government owns the Bonds, such deposits can be replaced by the remittances described above.

(iii) The Issuer shall next, on each date that payment is made as set forth in (ii) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Reserve Fund, 1/12th of 1/10th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bonds in any year, until the amount in the Reserve Fund equals such maximum amount (the "Reserve Requirement"). After the Reserve Requirement has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bonds and for payment of Operating Expenses of the System, as shall be required to maintain the Reserve Requirement. Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Bonds to said National Finance Office (or other place provided) as the same

shall become due or for prepayment of installments on the Bonds, or for mandatory prepayment of the Bonds as hereinafter provided, and for no other purpose, in accordance with the aggregate principal amount thereof outstanding.

(iv) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, moneys remaining therein and not permitted to be retained therein, if any ("Surplus Revenues"), may be used to prepay installments of the Bonds, or for any lawful purpose.

(v) Any withdrawals from the Reserve Fund which result in a reduction in the balance of the Reserve Fund to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full for payment of debt service on the Bonds.

(vi) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not required to be retained therein may be used to prepay installments of the Bonds or for any lawful purpose.

Whenever the moneys in the Reserve Fund shall be sufficient to prepay the Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Depository Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Reserve Fund as herein provided, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bonds and the interest thereon, but the Depository Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under State law.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Depository Bank shall keep the moneys in the Reserve Fund invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Resolution shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Board of Investments. Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account.

(C) Change of Depository Bank. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the aforesaid Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that said Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

(D) User Contracts. The Issuer shall, prior to delivery of the Bond, provide evidence that there will be at least one (1) new bona fide user of the System, being the Calhoun County High/Middle School, and must obtain a user agreement and the user contribution, if any, from each new user and deposit in the Project Construction Account all such user contributions collected.

(E) Charges and Fees. The Issuer shall remit from the Revenue Fund to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

(F) Remittances. All remittances made by the Issuer to the Depository Bank shall identify clearly the fund or account into which each amount is to be deposited.

(G) Gross Revenues. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### GENERAL COVENANTS

Section 6.01. General Statement. So long as the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bonds remaining unpaid, together with interest accrued and

to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 6.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce Net Revenues equal to not less than one hundred ten percent (110%) of the annual debt service on the Bonds and to make the payments required herein into the Reserve Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 6.03. Sale of the System. The System may not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 6.04. Issuance of Parity Bonds. No parity bonds payable out of the revenues of the System shall be issued after the issuance of the Bond pursuant hereto except with the prior written consent of the Purchaser or the then holder of or Trustee or agent for the holder of the Bond.

Section 6.05. Insurance and Bond. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date

of delivery of the Bond.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(D) Workers' Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of Jackson County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' Compensation coverage shall be maintained as required by the laws of the State.

(E) Fidelity Bonds will be provided as to every member of the Board and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total annual debt service requirement for all outstanding loans made and bonds held by the Purchaser.

(F) Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer.

(G) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the District will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 6.06. Statutory Mortgage. For the further protection of the holders of the Bond, a statutory mortgage lien upon the System and Revenues is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bond.

Section 6.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of any monthly amortization installment at the date specified for payment thereof and/or;

(B) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law or of this Resolution.

Section 6.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser shall have all rights under the Act and may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights and shall have all rights prescribed by the Act, State Code and other applicable law.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The Receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 6.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty (30) days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the preceding year by more than ten percent (10%); and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget shall be for a reason

beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 6.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 6.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 6.12. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer further covenants to comply with the Act with respect to such books, records and accounts.

Section 6.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 6.14. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 6.15. Tax Covenants as to Tax Exempt Status of Bonds.

1. The Issuer covenants that (a) it shall not permit or cause to be done any act or thing which would result in the loss of

exemption from tax of interest on the Bond under Section 103(a) of the Internal Revenue Code of 1986, as amended, and all Regulations promulgated thereunder (the "Code"), or under any successor or similar provision of the Code hereinafter enacted and applicable to the Bond; (b) it shall not invest or otherwise use or permit or cause to be invested or used, any of the proceeds of the Bond, or moneys deemed to be proceeds of the Bond under the Code, directly or indirectly, in any manner which would result in such Bond being classified as an "arbitrage bond" within the meaning of Section 148 of the Code or regulations thereunder, and shall comply with the requirements of such Section; and (c) no part of the proceeds of the Bond or any funds held under the Resolution shall at any time be used directly or indirectly for any purpose which would cause the Bond to be subject to treatment as a "private activity bond" under the Code and to that end the Issuer will comply with the applicable law as long as the Bond is outstanding.

2. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of ten percent (10%) of the Net Proceeds of the Bond are used for private business use if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payment in respect of property used or to be used for a private business use or to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a private business use, and (ii) and that, in the event that both (A) in excess of five percent (5%) of the Net Proceeds of the Bond are used for a private business use, and (B) an amount in excess of five percent (5%) of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said private business use, then said excess over said five percent (5%) of Net Proceeds of the Bonds used for a private business use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such private business use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of five percent (5%) of the Net Proceeds of the Bond are used, directly or indirectly, to make or finance a loan (other

than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bond and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Holder) so that the interest on the Bond will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Holder) which would adversely affect such exclusion.

## ARTICLE VII

### RATES, ETC.

#### Section 7.01. Initial Schedule of Rates and Charges.

A. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Recommended Decision of the Public Service Commission dated April 21, 1998, in Case Number 97-0175-PWD-CN and Case No. 97-1137-PWD-19A, which Recommended Decision became final on May 4, 1998 as a result of a Commission Order waiving the 15 day period to file exceptions which was entered on April 29, 1998, which Recommended Decision and Final Order are incorporated herein by reference and are made a part hereof.

B. The Issuer hereby modifies and enacts to the extent necessary the rates and charges as set out in the above-referenced order and to be included on a tariff sheet to be filed with the Public Service Commission which rates and conditions are as follows:

#### AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

#### RATES

First	2,000 gallons used per month	\$6.26 per 1,000 gallons
Next	8,000 gallons used per month	\$6.16 per 1,000 gallons
All over	10,000 gallons used per month	\$6.05 per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of meter installed:

5/8"	\$12.52/month
3/4"	18.80/month
1"	31.30/month
1 1/2"	62.60/month
2"	100.20/month
3"	187.80/month
4"	313.00/month
6"	626.00/month
8"	1,001.60/month

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE

\$250.00

LEAK ADJUSTMENT INCREMENT

\$2.83 per 1,000 gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

Section 7.02. Further Covenants.

The Issuer hereby further covenants and agrees as follows:

A. There shall not be any discrimination or differential in rates between customers in similar circumstances.

B. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act.

The Issuer shall have such remedies and powers as are provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the Facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or Facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Defeasance of Bond. If the Issuer shall pay or there shall otherwise be paid, to the Purchaser, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then with respect to the Bond, the pledge of Net Revenues and other moneys and securities pledged under this Resolution, and all covenants, agreements and other obligations of the Issuer to the Purchaser, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 8.02. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Bond, the Issuer shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter shall file such a Financing Statements in the offices of the Secretary of State of West Virginia and of the Clerk of the County Commission of Calhoun County.

Section 8.03. Delivery of Bond. The Chairman and Secretary of the Governing Body are hereby authorized and directed to cause the Series 1998 Bond, numbered R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 8.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of State law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 8.05. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the

Loan Resolution (Form FmHA 442-47).

Section 8.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 8.07. Modification or Amendment. This Resolution may not be modified or amended in any material manner after final passage without the prior written consent of the Purchaser and/or holder of the Bond.

Section 8.08. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 8.09. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Resolution.

Section 8.10. Effective Time. This Resolution shall take effect immediately upon its adoption.

Section 8.11 Statutory Notice of Meeting and Bond Issue. An abstract of this Resolution determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once in a qualified newspaper having a general circulation in the Mt. Zion Public Service District, together with a notice stating that this Resolution will be considered and that the Issuer contemplates the issuance of the Bond, and that any person interested may appear before the Public Service Board upon a date certain, not less than ten (10) days subsequent to the date of publication of such abstract of this Resolution and notice, and present protests, and that a certified copy of the Resolution is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such meeting, all objections and suggestions shall be heard, and the Governing Body shall take such action as it shall deem proper in the premises.

Adopted: May 19, 1998

MT. ZION PUBLIC SERVICE DISTRICT

By: Sharon Pastalwart  
Chairman

(SEAL)

ATTEST:

By: Kilma Mace  
Secretary

CERTIFICATION

I, Wilma Mace, Secretary of the Public Service Board of the Mt. Zion Public Service District, hereby certify that the foregoing is a true and correct copy of the Resolution approved at a special meeting of said Public Service Board held on May 19, 1998. I further hereby certify that the action of said Public Service Board set forth therein remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 20th day of May, 1998.

Wilma Mace  
Secretary

STATE OF WEST VIRGINIA,  
COUNTY OF CALHOUN, to-wit:

The foregoing instrument was acknowledged before me this 20th day of May, 1998, by Sharon Postalwait, the Chairman of the Mt. Zion Public Service District, a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, West Virginia, on behalf of said public service district.

My commission expires JUNE 12, 1999.



NOTARY PUBLIC

[SEAL]





\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

REGISTRY

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
AR-1	\$600,000	United States of America	April 26, 2010
BR-1	\$850,000	United States of America	April 26, 2010



\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

RECEIPT FOR BONDS AND TRANSCRIPT

The undersigned, for Rural Utilities Service (the "Purchaser"), hereby certifies as follows:

1. On the 26<sup>th</sup> day of April, 2010, at Arnoldsburg, West Virginia, the undersigned received the Mt. Zion Public Service District, Water Revenue Bond, Series 2010 A, numbered AR-1, in the amount of \$600,000, dated as of the date hereof, bearing interest at the rate of 4.125% per annum, payable in monthly installments as stated in the Series 2010 A Bond, and the Mt. Zion Public Service District, Water Revenue Bond, Series 2010 B, numbered BR-1, in the amount of \$850,000, dated as of the date hereof, bearing interest at the rate of 4.125% per annum, payable in monthly installments as stated in the Series 2010 B Bond. The Bonds represent the entire above-captioned bond issue.
2. At the time of such receipt, the Bonds had been executed and sealed by the designated officials of the Public Service District.
3. At the time of such receipt, there was paid to the Public Service District payments in the amounts of \$316,300 and \$16,700, representing a portion of the principal amounts of the Bonds.
4. There will be provided to the undersigned a set of Bond Transcript documents.

WITNESS my signature as of the 26<sup>th</sup> day of April, 2010.

RURAL UTILITIES SERVICE

By:   
Rural Development Specialist



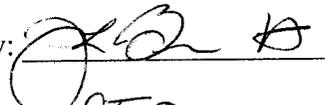
\$600,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 A  
and  
\$850,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
SERIES 2010 B

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

Calhoun County Bank, a state banking corporation, at its office located in Grantsville, Calhoun County, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution of the Mt. Zion Public Service District (the "District") duly adopted by the Public Service Board (the "Board") of the District and effective on November 28, 2009, and a Supplemental Resolution of the District duly adopted by the Board of the District and effective on April 12, 2010 (collectively, the "Resolution"), authorizing issuance by the District of its Water Revenue Bond, Series 2010 A and Revenue Bond Series 2010 B, dated April 26, 2010, in the aggregate principal amounts of \$600,000 and \$850,000, and agrees to perform all duties of Depository Bank in connection with the Project Construction Account, all as set forth in the Resolution.

Witness my signature as of the 26<sup>th</sup> day of April, 2010.

CALHOUN COUNTY BANK

By: 

Its: CEO



## ARTICLE 13A

### PUBLIC SERVICE DISTRICTS

#### Section

- 16-13A-1. Legislative findings.
- 16-13A-1a. Jurisdiction of the public service commission.
- 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
- 16-13A-1c. General purpose of districts.
- 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.
- 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- 16-13A-3a. Removal of members of public service board.
- 16-13A-4. Board chairman; members' compensation; procedure; district name.
- 16-13A-5. General manager of board.
- 16-13A-6. Employees of board.
- 16-13A-7. Acquisition and operation of district properties.
- 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- 16-13A-9a. Limitations with respect to foreclosure.
- 16-13A-10. Budget.
- 16-13A-11. Accounts; audit.
- 16-13A-12. Disbursement of district funds.
- 16-13A-13. Revenue bonds.
- 16-13A-14. Items included in cost of properties.
- 16-13A-15. Bonds may be secured by trust indenture.
- 16-13A-16. Sinking fund for revenue bonds.
- 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
- 16-13A-18. Operating contracts.
- 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
- 16-13A-19. Statutory mortgage lien created; foreclosure thereof.
- 16-13A-20. Refunding revenue bonds.
- 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
- 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
- 16-13A-23. Validation of acts and proceedings of public service boards.
- 16-13A-24. Acceptance of loans, grants or temporary advances.
- 16-13A-25. Borrowing and bond issuance; procedure.

#### § 16-13A-1. Legislative findings

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been

unable to obtain public utility services. To further this effort, and to insure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts.

Acts 1953, c. 147; Acts 1980, c. 60; Acts 1986, c. 81.

**Cross References**

County courts, authority to make grants for water and sewer systems, see § 7-1-3t.

**Administrative Code References**

Sewer utilities regulations, see W. Va. Code St. R. § 150-5-1 et seq.

**Library References**

- |                                    |  |
|------------------------------------|--|
| Counties ↯18.                      | C.J.S. Counties § 31.                            |
| Municipal Corporations ↯5, 6.      | C.J.S. Municipal Corporations § 11.              |
| Public Utilities ↯145.             | C.J.S. Public Utilities §§ 26 to 32, 159 to 167, |
| Westlaw Topic Nos. 104, 268, 317A. | 169 to 171, 177 to 178.                          |

**Notes of Decisions**

- In general 2
- Admissibility of evidence 8
- Construction and application 3
- Costs 9
- Creation and enforcement of liens 7
- Eminent domain powers 4
- Property of public service district 5
- Rates and charges for service 6

**Validity 1**

**1. Validity**

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying water and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6,

## PUBLIC SERVICE DISTRICTS

## § 16-13A-1

Note 6

§ 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 123(3); Statutes ⇨ 123(5)

Statute authorizing creation of public service districts violates no provision of State Constitution, nor is it violative of Fourteenth Amendment to United States Constitution. Act 1953, c. 147; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4056; Municipal Corporations ⇨ 4

In statute authorizing creation of public service districts, provision for delinquent fixed rates and charges for services rendered to be lien on premises served was not unconstitutional as depriving owners of property without due process of law or as violating Fourteenth Amendment of United States Constitution or applicable provisions of State Constitution. Acts 1953, c. 147, § 1 et seq.; Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4416; Municipal Corporations ⇨ 408(1)

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2355; Municipal Corporations ⇨ 4

### 2. In general

A public service district may be created for the purpose of furnishing water or sewer services, or both water and sewer services. Code, 16-13A-1. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 5

Creation and operation of water or sanitary districts or authorities by issuance of revenue bonds payable from revenues are authorized. Code, 16-13A-1 et seq. State ex rel. Appalachian Power Co. v. Gainer, 1965, 143 S.E.2d 351, 149 W.Va. 740. Health ⇨ 369; Waters And Water Courses ⇨ 183.5

A county court may use Federal Revenue Sharing Funds for ordinary and necessary maintenance and operating expenses for sewage disposal, sanitation, and pollution abatement, and ordinary and necessary capital expenditures authorized by law but may not use such funds for matching purposes under any other federal-aid program. 55 W.Va. Op.Atty.Gen. 116 (June 27, 1973) 1973 WL 159152.

### 3. Construction and application

A public service district is a public corporation and does not come within constitutional

provision which in substance provides that all corporations shall be created by general laws and which is applicable to private corporations. Acts 1953, c. 147, § 1 et seq.; Const. art. 11, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 80(3)

### 4. Eminent domain powers

Where notice, hearing and order with respect to creation of public service district considered only the question of furnishing water, such district was created only for the purposes of furnishing water services, and had no power to condemn real estate for sewerage facilities. Code, 16-13A-1, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Eminent Domain ⇨ 32

Condemnation by public service district is not a taking of private property for private use in violation of applicable constitutional provision. Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Eminent Domain ⇨ 13

### 5. Property of public service district

Property of public service district is public property used for public purposes, and, under constitutional provision that public property shall be exempt from taxation, statute authorizing creation of public service districts and granting tax exemption was not violative of constitutional provision requiring that taxation be equal and uniform throughout state. Acts 1953, c. 147, § 1 et seq.; Const. art. 10, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Taxation ⇨ 2289

### 6. Rates and charges for service

Relief under Federal Securities Act of 1933 was not adequate or sufficient remedy for relief sought by corporations holding sewer revenue bonds of public service district in mandamus proceeding to compel district to establish and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariff reflecting such charges with Public Service Commission, and any relief afforded under provisions of federal statute could not supersede relief which could be granted in mandamus proceeding. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Code, 16-13A-1 et seq. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 3(8)

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operation-

## § 16-13A-1

## PUBLIC HEALTH

### Note 6

al and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

It was ministerial duty of chairman of public service board of public service district to sign revenue bonds and to assist in effectuating their issuance, and in view of constitutionality of statute authorizing creation of the public service board, relator's showing of legal right to require performance of such duty, was sufficient and writ of mandamus would issue. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ⇨ 103

### 7. Creation and enforcement of liens

Public service district's failure to docket notice of lien prior to date purchaser recorded deed of trust prevented district from enforcing sewer lien against purchaser. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Municipal Corporations ⇨ 712(7)

Public service district liens must be docketed to be enforceable against purchaser of property for valuable consideration, without notice. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Gas ⇨ 14.6; Municipal Corporations ⇨ 712(7); Waters And Water Courses ⇨ 203(14)

## § 16-13A-1a. Jurisdiction of the public service commission

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers and such powers shall be in addition to all other powers of the public service commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters.

Acts 1986, c. 81.

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ⇨ 222; Municipal Corporations ⇨ 225(1)

### 8. Admissibility of evidence

Extrinsic evidence relating to background and negotiations with regard to forming a public service district were not admissible in regard to construction of a contract for furnishing of water, where contract language was clear and unambiguous that district was to furnish water as customer should require. Berkeley County Public Service Dist. v. Vitro Corp. of America, 1968, 162 S.E.2d 189, 152 W.Va. 252. Evidence ⇨ 448

### 9. Costs

Costs of proceeding whereby constitutionality of statute authorizing creation of public service districts was tested would not be taxed against defendant who was chairman of public service board and who, honestly and in good faith, though mistakenly, endeavored to perform his duty in refusing to sign revenue bonds, and each litigant would pay his own costs. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ⇨ 190

### Library References

Public Utilities ⇨ 145.

Westlaw Topic No. 317A.

## PUBLIC SERVICE DISTRICTS

## § 16-13A-1b

C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
169 to 171, 177 to 178.

### Notes of Decisions

In general 1

1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities ⇌ 123

#### 1. In general

Statute clearly and unambiguously gives Public Service Commission (PSC) power to reduce or increase utility rates whenever it finds that existing rate is unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provision of legislation governing Commission. Code, 24-1-1 et seq., 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist.,

Legislature sought to establish in Public Service Commission (PSC) governmental entity which would protect public from unfair rates and practices by public utilities and also ensure that public utilities are given competitive return for their stockholders. Code, 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities ⇌ 123; Public Utilities ⇌ 129

### § 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission.

Acts 1986, c. 81; Acts 1994, c. 61.

**Cross References**

Public Service Commission, participation in studies, see § 24-1-1b.

**Library References**

Counties  $\S$  18, 47.  
Westlaw Topic No. 104.  
C.J.S. Counties  $\S\S$  31, 70 to 73.

**§ 16-13A-1c. General purpose of districts**

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with: (1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills"); (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforce-

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ment and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

Acts 1986, c. 81; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

### Library References

Counties Ⓒ18.

Gas Ⓒ12.

Municipal Corporations Ⓒ5, 6.

Waters and Water Courses Ⓒ183.5.

Westlaw Topic Nos. 104, 190, 268, 405.

C.J.S. Counties § 31.

C.J.S. Gas §§ 43 to 45.

C.J.S. Municipal Corporations § 11.

C.J.S. Waters §§ 483, 543 to 581.

### § 16-13A-2. **Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the Public Service Commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: *Provided*, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the Public Service Commission, which approval and consent shall be in accordance with rules promulgated by the Public Service Commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: *Provided, however*, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof: *Provided further*, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district

except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. Within ten days of fixing the date of hearing, the county commission shall provide the Executive Secretary of the Public Service Commission with a copy of the order or petition and notification of the time and place of the hearing to be held by the county commission. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing

the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the Public Service Commission for such purpose: *Provided*, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the Public Service Commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: *Provided, however*, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the Public Service Commission. The Public Service Commission may provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The Public Service Commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the Public Service Commission pursuant to this section and section one-b, of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: *Provided*, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the Public Service Commission shall apply. The Commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: *Provided, however*, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the Secretary of State and the Public Service Commission by the first day of July of each year.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1967, c. 105; Acts 1975, c. 140; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1995, c. 125, eff. 90 days after March 11, 1995; Acts 2002, c. 272, eff. 90 days after March 9, 2002; Acts 2005, c. 195, eff. 90 days after April 9, 2005.

**Library References**

Counties Ⓒ47.  
Municipal Corporations Ⓒ6.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 70 to 73.  
C.J.S. Municipal Corporations § 11.

**Notes of Decisions**

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ter and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes Ⓒ 123(3); Statutes Ⓒ 123(5)

**1. Validity**

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying wa-

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24.

State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ☞ 2355; Municipal Corporations ☞ 4

## 2. Creation of public service districts

Where notice, hearing and order with respect to creation of public service district considered only the question of furnishing water, such district was created only for the purposes of furnishing water services, and had no power to condemn real estate for sewerage facilities. Code, 16-13A-1, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Eminent Domain ☞ 32

Where public service district was created for purpose of furnishing water services, county court had authority to add sewerage services to the facilities of the district under appropriate proceedings. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ☞ 270

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ☞ 222; Municipal Corporations ☞ 225(1)

## 3. District boundaries

Public service district statute that allowed county commission to designate district's boundaries did not also empower commission to make service territories exclusive, displacing Public Service Commission's (PSC) authority to determine service rights. Code, 16-13A-2. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Counties ☞ 47

## 4. Notice of hearing

Provisions of statute, with respect to creation of public service districts, which relate to the filing of the petition or motion of the county court, the description of the territory to be embraced, and like provisions are mandatory; but, despite use of the word "shall," the require-

ments for posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ☞ 12(3); Municipal Corporations ☞ 12(6)

Though record with respect to creation of public service district was silent with respect to posting of notice of hearing and as to whether hearing was not more than 40 nor less than 20 days after his fixing the date for hearing as provided by statute, there was substantial compliance with statute where hearing was set some time prior to the date of the hearing, there was publication of notice more than ten days prior to the date of the hearing as required, and there were no objections either before, during or after the hearing to the creation of the district or to the procedures employed in its creation. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ☞ 12(6)

## 5. Number of voters within district

Public service district was not void because there were not 100 legal voters owning property within the district. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ☞ 6

## 6. Costs

Costs of proceeding whereby constitutionality of statute authorizing creation of public service districts was tested would not be taxed against defendant who was chairman of public service board and who, honestly and in good faith, though mistakenly, endeavored to perform his duty in refusing to sign revenue bonds, and each litigant would pay his own costs. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ☞ 190

## 7. Referendum

A public service district, once created by county court, not subject to referendum on issue to continue or be abolished. 52 W.Va. Op. Atty. Gen. 33 (August 11, 1966) 1966 WL 87428.

## § 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into

contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing stormwater services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

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If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six

years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1971, c. 72; Acts 1981, c. 124; Acts 1983, c. 166; Acts 1986, c. 81; Acts 1994, c. 61; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Law Review and Journal Commentaries**

The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ? John W. Fisher, II, 98 W. Va. L. Rev. 449 (1996).  
 "Yes, West Virginia, there is a special priority for the purchase money mortgage." The recognition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

**Library References**

Counties ⇨18. C.J.S. Counties § 31.  
 Municipal Corporations ⇨6. C.J.S. Municipal Corporations § 11.  
 Westlaw Topic Nos. 104, 268.

**Notes of Decisions**

In general 1  
 Criminal responsibility of members 5  
 Ministerial officers, generally 3  
 Removal of members 4  
 Sale of water 6  
 Standard of care 2  
 Tort Claims Act 7  
 1. In general  
 Board members of the Mt. Zion Public Service District cannot be compensated for performing the duties of treasurer and/or secretary

for the Mt. Zion Public Service District; furthermore, a board member may not be compensated for reading meters for the Mt. Zion Public Service District. 63 W.Va. Op.Atty.Gen. 2 (July 14, 1988) 1988 WL 483329.

#### 2. Standard of care

Public service district owes duty of reasonable care to avoid damage to property of others with respect to maintenance of water lines. *McCloud v. Salt Rock Water Public Service Dist.*, 2000, 533 S.E.2d 679, 207 W.Va. 453. *Waters And Water Courses* ☞ 205

#### 3. Ministerial officers, generally

Public policy of West Virginia, as evidenced by statute making it unlawful for county or district board member or officer to be or become pecuniarily interested in proceeds of any contract or service over which he might have any voice, influence, or control, is not directed against actual fraud or collusion but is for purpose of preventing those acts and eliminating any opportunity therefor, and purpose of statute is to protect public funds and give official recognition to fact that person cannot properly represent public in transacting business with himself. Code, 61-10-15. *State v. Neary*, 1987, 365 S.E.2d 395, 179 W.Va. 115. *Courts* ☞ 55; *Judges* ☞ 21

#### 4. Removal of members

Public Service District board member can be removed by majority vote of registered voters. 51 W.Va. Op.Atty.Gen. 564 (November 10, 1965) 1965 WL 92492.

#### 5. Criminal responsibility of members

County commissioner's conviction for being or becoming pecuniarily interested in contract over which he might have some voice or influence was supported by evidence of his continued performance of contract maintenance work for public service district after his election to commission. Code, 61-10-15. *State v. Neary*, 1987, 365 S.E.2d 395, 179 W.Va. 115. *Counties* ☞ 60

#### 6. Sale of water

Public Service Districts may sell, at wholesale, bulk water to other municipal corporations. 51 W.Va. Op.Atty.Gen. 739 (March 16, 1966) 1966 WL 87469.

#### 7. Tort Claims Act

Tort Claims Act's protection extended to public service districts, under the Act's definition of political subdivision, which included the term "public service districts," despite general authorization for public service districts to "sue and be sued," in the Public Health statutes. *Zirkle v. Elkins Road Public Service Dist.*, 2007, 655 S.E.2d 155. *Waters And Water Courses* ☞ 183.5

### § 16-13A-3a. Removal of members of public service board

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal.

Acts 1963, c. 75; Acts 1971, c. 72; Acts 1981, c. 124; Acts 1986, c. 81.

**Library References**

Counties ☞45.  
 Public Utilities ☞145.  
 Westlaw Topic Nos. 104, 317A.

C.J.S. Counties § 67.  
 C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
 169 to 171, 177 to 178.

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is to protect public funds and give official recognition to fact that person cannot properly represent public in transacting business with himself. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Courts ☞ 55; Judges ☞ 21

**1. Criminal responsibility of members**

Upon becoming member of county commission, person who is pecuniarily interested in proceeds of any contract or service with public service district violates criminal conflict of interest statute; by virtue of that position, that person has some voice, influence, or control over continuation of contract. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ☞ 60

**2. Ministerial officers, generally**

Public policy of West Virginia, as evidenced by statute making it unlawful for county or district board member or officer to be or become pecuniarily interested in proceeds of any contract or service over which he might have any voice, influence, or control, is not directed against actual fraud or collusion but is for purpose of preventing those acts and eliminating any opportunity therefor, and purpose of statute

**3. Sufficiency of evidence**

County commissioner's conviction for being or becoming pecuniarily interested in contract over which he might have some voice or influence was supported by evidence of his continued performance of contract maintenance work for public service district after his election to commission. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ☞ 60

Conflict of interest indictment against county commissioner was sufficient even though it did not characterize commissioner's interest as pecuniary, and commissioner was not entitled to bill of particulars. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ☞ 60

**§ 16-13A-4. Board chairman; members' compensation; procedure; district name**

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five

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dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the Public Service Commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful

misconduct in the performance of their duties. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: *Provided*, That such name change will not be effective until approved by the public service commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2000, c. 199, eff. 90 days after March 11, 2000; Acts 2005, c. 196, eff. 90 days after April 8, 2005.

**Library References**

Counties Ⓒ68, 87.  
Municipal Corporations Ⓒ161.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 107 to 118, 128.  
C.J.S. Municipal Corporations §§ 372 to 390.

**Notes of Decisions**

**In general 1**

**1. In general**

Board members of the Mt. Zion Public Service District cannot be compensated for per-

forming the duties of treasurer and/or secretary for the Mt. Zion Public Service District; furthermore, a board member may not be compensated for reading meters for the Mt. Zion Public Service District. 63 W.Va. Op.Atty.Gen. 2 (July 14, 1988) 1988 WL 483329.

**§ 16-13A-5. General manager of board**

The board may employ a general manager to serve a term of not more than five years and until his or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

Such general manager shall be chosen without regard to his or her political affiliations and upon the sole basis of his or her administrative and technical qualifications to manage public service properties and affairs of the district and he or she may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he or she is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or

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another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

#### Library References

Counties ⇨65, 68.

Municipal Corporations ⇨149, 161.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 101 to 103, 107 to 118.

C.J.S. Municipal Corporations §§ 361 to 366,  
368, 372 to 390.

### § 16-13A-6. Employees of board

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees.

Acts 1953, c. 147; Acts 1981, c. 124.

#### Library References

Counties ⇨65, 68, 87.

Municipal Corporations ⇨149, 161, 170.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 101 to 103, 107 to 118,  
128.

C.J.S. Municipal Corporations §§ 361 to 366,  
368, 372 to 405.

### § 16-13A-7. Acquisition and operation of district properties

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent

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possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

Acts 1953, c. 147; Acts 1967, c. 105; Acts 1981, c. 124; Acts 1982, c. 24; Acts 1986, c. 81; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Library References**

Counties ☞107.  
Municipal Corporations ☞711.  
Public Utilities ☞114.  
Westlaw Topic Nos. 104, 268, 317A.

C.J.S. Counties § 147.  
C.J.S. Municipal Corporations § 1535.  
C.J.S. Public Utilities §§ 5 to 9, 202 to 207.

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers**

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding

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and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities, a stormwater system, stormwater management program or gas facilities for water, sewer, stormwater or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

Acts 1953, c. 147; Acts 1980, c. 60; Acts 1981, c. 124; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

### Library References

Counties ☞103, 104.

Eminent Domain ☞6, 16.

Municipal Corporations ☞221, 224.

Westlaw Topic Nos. 104, 148, 268.

C.J.S. Counties §§ 143 to 144, 147.

C.J.S. Municipal Corporations §§ 873 to 880.

C.J.S. Property § 17.

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#### 1. Validity

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying wa-

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ter and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 123(3); Statutes ⇨ 123(5)

Property of public service district is public property used for public purposes, and, under constitutional provision that public property shall be exempt from taxation, statute authorizing creation of public service districts and granting tax exemption was not violative of constitutional provision requiring that taxation be equal and uniform throughout state. Acts 1953, c. 147, § 1 et seq.; Const. art. 10, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Taxation ⇨ 2289

#### 2. In general

Statute providing that private property may be taken or damaged for a number of specified purposes amounts to legislative declaration of public purposes within meaning of laws, and it is a judicial question whether such declaration is consonant with organic law. Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2510

#### 3. Eminent domain powers

Although construction of new facility proposed by utility will often require taking of private property through eminent domain, absent express statutory language Public Service Commission (PSC) has no duty to review and decide issues that are inherent in eminent domain proceeding. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Public Utilities ⇨ 114

Statute providing that private property may be taken or damaged for a number of specified purposes is consonant with organic law and is constitutional. Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Eminent Domain ⇨ 3

#### 4. Valuation of property

Although landowner is competent to give estimate of value of property in eminent domain proceeding, that valuation is not conclusive; government agency may rely on appraisal report concerning estimated value of property to

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be taken. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Evidence ⇨ 568(4)

#### 5. Environmental assessment

Whether construction of sewage lagoons would constitute "nuisance" does not defeat Public Service Commission's (PSC) jurisdiction to issue certificate of public convenience and necessity; while PSC may assess environmental considerations, chief inquiry by PSC is need of public for project. Code, 24-2-11. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Municipal Corporations ⇨ 708

#### 6. Connections with sewers or drains

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1); Waters And Water Courses ⇨ 201

If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right to extend water and/or sewer service which were not being previously furnished to the tract by the public service district, and under those circumstances, a public service district would need the consent of the municipality and the Public Service Commission (PSC) in order to provide such service. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1); Waters And Water Courses ⇨ 201; Waters And Water Courses ⇨ 202

#### 7. Public corporation

A public service district is a public corporation and does not come within constitutional provision which in substance provides that all corporations shall be created by general laws and which is applicable to private corporations. Acts 1953, c. 147, § 1 et seq.; Const. art. 11, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 80(3)

## § 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees

(a)(1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management,

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maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or fifty dollars, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or fifty dollars and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or fifty dollars

has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the public service commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities either water or sewer, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: *Provided, however*, That any termination of water service must comply with all rules and orders of the public service commission.

(c) Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where

there is gravity flow or transportation by any other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the division of health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the division of health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near the stormwater system and where stormwater from real property affects or drains into the stormwater system, it is hereby found, determined and declared that the owner, tenant or occupant is being served by the stormwater system and it is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge, and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipi-

pal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1989, c. 174; Acts 1994, c. 61; Acts 2002, c. 272, eff. 90 days after March 9, 2002; Acts 2003, c. 183, eff. 90 days after March 8, 2003.

**Law Review and Journal Commentaries**

The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ? John W. Fisher, II, 98 W. Va. L. Rev. 449 (1996).

"Yes, West Virginia, there is a special priority for the purchase money mortgage." The recog-

nition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

**Library References**

Gas ⇨14.6.  
Municipal Corporations ⇨712.  
Waters and Water Courses ⇨203.  
Westlaw Topic Nos. 190, 268, 405.

C.J.S. Gas §§ 64, 84 to 85.  
C.J.S. Municipal Corporations § 1535.  
C.J.S. Waters §§ 483, 666 to 732.

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applicable provisions of State Constitution. Acts 1953, c. 147, § 1 et seq.; Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4416; Municipal Corporations ⇨ 408(1)

**1. Validity**

In statute authorizing creation of public service districts, provision for delinquent fixed rates and charges for services rendered to be lien on premises served was not unconstitutional as depriving owners of property without due process of law or as violating Fourteenth Amendment of United States Constitution or

**2. Takings**

Public service district's requiring property owner to connect onto its sewer system and to abandon private sewer system located on property was not a taking of private property without just compensation. Const. Art. 3, § 9; Code, 16-13A-9; U.S.C.A. Const.Amend. 5. Kingmill Valley Public Service Dist. v. River-

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view. *Estates Mobile Home Park, Inc.*, 1989, 386 S.E.2d 483, 182 W.Va. 116. Eminent Domain  $\Leftrightarrow$  2.18

Statute providing that private property may be taken or damaged for a number of specified purposes amounts to legislative declaration of public purposes within meaning of laws, and it is a judicial question whether such declaration is consonant with organic law. *Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl*, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law  $\Leftrightarrow$  2510

### 3. Public service district liens

Public service district liens must be docketed to be enforceable against purchaser of property for valuable consideration, without notice. Code, 16-13A-9, 38-10C-1. *McClung Investments, Inc. v. Green Valley Community Public Service Dist.*, 1997, 485 S.E.2d 434, 199 W.Va. 490. Gas  $\Leftrightarrow$  14.6; Municipal Corporations  $\Leftrightarrow$  712(7); Waters And Water Courses  $\Leftrightarrow$  203(14)

Public service district's failure to docket notice of lien prior to date purchaser recorded deed of trust prevented district from enforcing sewer lien against purchaser. Code, 16-13A-9, 38-10C-1. *McClung Investments, Inc. v. Green Valley Community Public Service Dist.*, 1997, 485 S.E.2d 434, 199 W.Va. 490. Municipal Corporations  $\Leftrightarrow$  712(7)

If owner, tenant or occupant of garage apartment did not receive notice that public service district's sewer facilities were available for apartment, district would have been without statutory authority to impose charges and a lien against apartment for sewer services, though the apartment was on a lot containing another dwelling which was properly subject to sewer service charges. Code, 16-13A-9, 16-13A-21. *Rhodes v. Malden Public Service Dist.*, 1983, 301 S.E.2d 601, 171 W.Va. 645. Municipal Corporations  $\Leftrightarrow$  712(7)

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. *Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl*, 1955, 89 S.E.2d 693, 141 W.Va. 233. Muni-

pal Corporations  $\Leftrightarrow$  222; Municipal Corporations  $\Leftrightarrow$  225(1)

### 4. Rates and charges for service

Statute clearly and unambiguously gives Public Service Commission (PSC) power to reduce or increase utility rates whenever it finds that existing rate is unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provision of legislation governing Commission. Code, 24-1-1 et seq., 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities  $\Leftrightarrow$  123

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus  $\Leftrightarrow$  110

Duty imposed on public service district, a public corporation and political subdivision of state, to establish rates and charges sufficient to pay cost of maintenance, operation and depreciation of properties of district and principal of and interest on all bonds issued by district is nondiscretionary duty which may be enforced by mandamus. Code, 16-13A-9. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus  $\Leftrightarrow$  80

### 5. Notice of availability of sewer service

Issue of fact as to whether owner or tenant had received notice that public service district's sewer services were available for garage apartment, so as to allow imposition of sewer service charges and a lien against apartment, was not appropriate for resolution in mandamus proceeding. Code, 16-13A-9, 16-13A-21. *Rhodes v. Malden Public Service Dist.*, 1983, 301 S.E.2d 601, 171 W.Va. 645. Mandamus  $\Leftrightarrow$  174

## § 16-13A-9a. Limitations with respect to foreclosure

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that

## § 16-13A-9a

## PUBLIC HEALTH

the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

Acts 1982, c. 74.

### Library References

Gas ☞14.6.  
Municipal Corporations ☞712.  
Waters and Water Courses ☞203.  
Westlaw Topic Nos. 190, 268, 405.

C.J.S. Gas §§ 64, 84 to 85.  
C.J.S. Municipal Corporations § 1535.  
C.J.S. Waters §§ 483, 666 to 732.

## § 16-13A-10. Budget

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board.

Acts 1953, c. 147; Acts 1981, c. 124.

### Library References

Counties ☞154.5.  
Municipal Corporations ☞879.  
Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1621 to 1622.

### Notes of Decisions

In general 1

#### 1. In general

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered

by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ☞ 110

## § 16-13A-11. Accounts; audit

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders

## PUBLIC SERVICE DISTRICTS

## § 16-13A-12

pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine, chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81.

### Library References

Counties ☞154.5.  
Municipal Corporations ☞879.  
Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1621 to  
1622.

## § 16-13A-12. Disbursement of district funds

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board.

Acts 1953, c. 147; Acts 1981, c. 124.

### Library References

Counties ☞158.  
Municipal Corporations ☞883.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 198.  
C.J.S. Municipal Corporations §§ 1626, 1635.

**§ 16-13A-13**

**PUBLIC HEALTH**

**§ 16-13A-13. Revenue bonds**

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

Acts 1953, c. 147; Acts 1970, c. 11; Acts 1970, c. 12; Acts 1970, 1st Ex. Sess., c. 2; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1989, c. 174.

**Library References**

Counties ☞174.

Municipal Corporations ☞911.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 218.

C.J.S. Municipal Corporations §§ 1647 to 1649.

## Notes of Decisions

## In general 1

## 1. In general

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such

charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

Two acts amending same Code section in same manner except as to maximum interest rate of bonds, enacted on same date at same legislative session, and impossible to determine which passed after the other, that having lower maximum interest rate will govern. 53 W.Va. Op. Atty. Gen. 418 (April 8, 1970) 1970 WL 116579.

## § 16-13A-14. Items included in cost of properties

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

Acts 1953, c. 147; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

## Library References

Counties ⇨ 154.5.

Municipal Corporations ⇨ 879.

Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1621 to 1622.

## § 16-13A-15. Bonds may be secured by trust indenture

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable

## § 16-13A-15

## PUBLIC HEALTH

and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee.

Acts 1953, c. 147.

### Library References

Counties Ⓒ183.

Municipal Corporations Ⓒ950(15).

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 222.

C.J.S. Municipal Corporations §§ 1708 to 1709.

### United States Code Annotated

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

## § 16-13A-16. Sinking fund for revenue bonds

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions.

Acts 1953, c. 147.

### Library References

Counties Ⓒ186.5.

Municipal Corporations Ⓒ951.

Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

**§ 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver**

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided.

Acts 1953, c. 147.

**Library References**

Counties ⇨188.

Municipal Corporations ⇨937, 955.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 226.

C.J.S. Municipal Corporations §§ 1707, 1711.

## § 16-13A-17

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### Notes of Decisions

#### In general 1

##### 1. In general

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered

by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

## § 16-13A-18. Operating contracts

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid.

Acts 1953, c. 147.

### Library References

Counties ⇨ 114.

Municipal Corporations ⇨ 328.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 161.

C.J.S. Municipal Corporations §§ 1027 to 1029.

## § 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission.

Acts 1963, c. 75; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1997, c. 160, eff. 90 days after April 10, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Library References**

Counties ☞110.	C.J.S. Counties § 147.
Municipal Corporations ☞225.	C.J.S. Municipal Corporations §§ 882 to 892.
Westlaw Topic Nos. 104, 268.	

**§ 16-13A-19. Statutory mortgage lien created; foreclosure thereof**

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property.

Acts 1953, c. 147.

**Library References**

Counties ☞188.	C.J.S. Counties § 226.
Municipal Corporations ☞937, 955.	C.J.S. Municipal Corporations §§ 1707, 1711.
Westlaw Topic Nos. 104, 268.	

**Notes of Decisions**

**In general 1**

**1. In general**

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property

of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ☞ 222; Municipal Corporations ☞ 225(1)

**§ 16-13A-20. Refunding revenue bonds**

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding

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**PUBLIC HEALTH**

bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

Acts 1953, c. 147.

**Library References**

Counties ⇨175.

Municipal Corporations ⇨913.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 218.

C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

**§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption**

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article: Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent.

Acts 1953, c. 147; Acts 1986, c. 81; Acts 1994, c. 61.

**Library References**

Counties ⇨18.

Municipal Corporations ⇨5.

Taxation ⇨2316, 3519.

Westlaw Topic Nos. 104, 268, 371.

C.J.S. Counties § 31.

C.J.S. Municipal Corporations § 11.

**Notes of Decisions**

**In general 2**  
**Validity 1**

**1. Validity**

Statute authorizing creation of public service districts violates no provision of State Constitution, nor is it violative of Fourteenth Amendment to United States Constitution. Act 1953,

c. 147; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4056; Municipal Corporations ⇨ 4

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional

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delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ☞ 2355; Municipal Corporations ☞ 4

### 2. In general

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl,

1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ☞ 222; Municipal Corporations ☞ 225(1)

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying water and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ☞ 123(3); Statutes ☞ 123(5)

### § 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards

All acts and proceedings taken by any county court of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect, for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article.

Acts 1958, c. 14; Acts 1960, c. 19.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

**Library References**

Counties ⇨18.  
 Municipal Corporations ⇨5.  
 Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 31.  
 C.J.S. Municipal Corporations § 11.

**§ 16-13A-23. Validation of acts and proceedings of public service boards**

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act.

Acts 1958, c. 14; Acts 1960, c. 19; Acts 1965, c. 134.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

**Library References**

Counties ⇨47.  
 Municipal Corporations ⇨166.  
 Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 70 to 73.  
 C.J.S. Municipal Corporations §§ 369 to 371.

**§ 16-13A-24. Acceptance of loans, grants or temporary advances**

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary

advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

Acts 1958, c. 14; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 118; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Library References**

Counties ⇨149.

C.J.S. Counties §§ 185, 187.

Municipal Corporations ⇨864(3).

C.J.S. Municipal Corporations §§ 1583 to 1585, 1587.

Westlaw Topic Nos. 104, 268.

**Notes of Decisions**

**In general** 1

note, is permissible borrowing under this section. 62 W.Va. Op.Atty.Gen. 27 (May 6, 1988) 1988 WL 483331.

**1. In general**

The borrowing by PSD's of money from counties and/or municipalities, as evidenced by a

**§ 16-13A-25. Borrowing and bond issuance; procedure**

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article without the prior consent and approval of the Public Service Commission: *Provided*, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five, from the commission and where the cost of the project changes but the change does not affect the rates established for the project.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or

(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.

Acts 1969, 1st Ex. Sess., c. 6; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1996, c. 213, eff. 90 days after March 9, 1996; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2003, c. 184, eff. 90 days after March 7, 2003; Acts 2005, c. 193, eff. 90 days after April 9, 2005; Acts 2006, c. 190, eff. 90 days after March 10, 2006.

**Library References**

Counties ⌘114.  
Municipal Corporations ⌘270.  
Public Utilities ⌘145.  
Westlaw Topic Nos. 104, 268, 317A.

C.J.S. Counties § 161.  
C.J.S. Public Utilities §§ 26 to 32, 159 to 167, 169 to 171, 177 to 178.

**Research References**

**ALR Library**

101 ALR 5th 287, Remedies for Sewage Treatment Plant Alleged or Deemed to be Nuisance.

**Notes of Decisions**

**In general 1**  
**Certificate of public convenience and necessity**  
**2**

**1. In general**

Proposed sewage treatment project complied with buffer zone requirements where all parties acknowledged that distance of proposed sewage lagoons from property owners' home was further than minimum buffer-zone requirement of 300 feet; Public Service Commission relied on ample evidence in record to support claim that proposed location was both cost-effective and

environmentally sound. Code, 16-13A-25, 24-2-11, 24-2-11(a). Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Municipal Corporations ⌘ 708

**2. Certificate of public convenience and necessity**

Public Service district must obtain certificate of public convenience and necessity before it can acquire or construct public service property. Code, 16-13A-25. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Public Utilities ⌘ 113